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Visa Waiver Program

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SUMMARY

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Visa Waiver Program

The Visa Waiver Program (VWP), established in 1986 as a trial program and made permanent in 2000 (P.L. 106-396), allows nationals from 42 countries to enter the United States for periods of up to 90 days as temporary visitors (nonimmigrants) for business or pleasure without first obtaining a visa. Generally, temporary visitors for business or pleasure must obtain a visa from Department of State (DOS) officers at a consular post abroad before traveling to the United States unless they are nationals of one of the countries that participates in the VWP.

Two main goals of the VWP are increasing tourism and strengthening national security. Some observers argue that the VWP strengthens national security because it sets standards for travel documents, requires information sharing between the member countries and the United States on criminal and security concerns, and mandates reporting of lost and stolen travel documents. VWP travelers have to present e-passports (i.e., passports with a data chip containing biometric information), which tend to be more difficult to alter than other types of passports. Nevertheless, some observers of the program have raised concerns about the possibility that terrorists will enter the United States under the VWP because those entering under the VWP undergo a biographic, rather than a biometric (i.e., fingerprint and digital photograph), security screening and do not need to interview in person with a U.S. consular official before embarking for the United States.

There is also interest in the VWP as a mechanism to promote tourism and commerce and to ease consular workloads abroad. In the years prior to the COVID-19 pandemic, VWP admissions constituted approximately one-third of all temporary visitor admissions. For example, in FY2019 there were more than 22.9 million admissions to the United States under this program, constituting 31% of all temporary visitor admissions. In FY2021, the number of VWP admissions dropped significantly (to 1 million), constituting nearly 9.7% of all temporary visitor admissions, likely due to the impacts of COVID-19 on international travel. VWP admissions began to rebound in FY2022 (11.5 million), constituting 29.3% of all temporary visitor admissions.

To qualify for the VWP, a country must offer reciprocal travel privileges to U.S. citizens; have had a nonimmigrant visa refusal rate of less than 3% for the previous year; issue their nationals machine-readable passports that incorporate biometric identifiers; issue tamper-resistant, machine-readable visa documents that incorporate biometric identifiers which are verifiable at the country's port of entry; report the loss and theft of passports; share specified information regarding nationals of the country who represent a threat to U.S. security; and not compromise the law enforcement or security interests of the United States by its inclusion in the program. Countries can be terminated from the VWP if they fail to meet any of these conditions or otherwise threaten the United States' security or immigration interests.

All foreign nationals (i.e., *aliens*) entering under the VWP must present passports that contain electronic data chips (e-passports). Under Department of Homeland Security (DHS) regulations, travelers who seek to enter the United States through the VWP are subject to the biometric requirements of the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program. In addition, aliens seeking to travel to the United States under the VWP must get an approval from the Electronic System for Travel Authorization (ESTA), a web-based system that checks the alien's information against relevant law enforcement and security databases, before they can board a plane to the United States.

Under statute, the Secretary of Homeland Security has the authority to waive the nonimmigrant visa refusal rate requirement, provided certain conditions are met. However, the waiver authority was suspended on July 1, 2009, because DHS had not fully implemented an air exit system that incorporates biometric identifiers (an air exit system that can verify the departure of not less than 97% of foreign nationals who exit through U.S. airports was one of the conditions for granting the Secretary waiver authority). The waiver will not be available until such a system is implemented, and it is unknown when a biometric air exit system will be completed and fully implemented.

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Introduction

The Visa Waiver Program (VWP)[1] allows nationals from certain countries[2] to enter the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. consulate abroad.[3] As of the cover date of this report, there are 42 countries participating in the VWP. Temporary visitors for business or pleasure from non-VWP countries[4] must obtain a visa from Department of State (DOS) officers at a consular post abroad before coming to the United States.

While there tends to be agreement that the VWP benefits the U.S. economy by facilitating legitimate travel, there is disagreement on the VWP's impact on national security.[5] Proponents of the program say the VWP strengthens U.S. national security because it sets standards for travel documents, requires information sharing between member countries and the United States on criminal and security concerns, and mandates reporting of lost and stolen travel documents.[6] Critics of the program argue the VWP creates a security loophole because VWP travelers do not undergo the in-person screening generally required to receive a visa.[7]

Current Policy

In general, temporary visitors for business or pleasure from most countries must obtain a B nonimmigrant visa[8] from DOS officers at a consular post abroad before coming to the United

[1] 8 U.S.C. §1187. The Visa Waiver Program is distinct from the Guam-Commonwealth of the Northern Mariana Islands Visa Waiver Program (G-CNMI VWP), established in 2009. G-CNMI VWP replaced the Guam Visa Waiver Program. The G-CNMI VWP is outside the scope of this report. For more information, see DHS, *Privacy Impact Assessment for the Guam-Commonwealth of Norther Mariana Islands Visa Waiver Program*, DHS/CBP/PIA-079, January 18, 2024.

[2] Throughout this report, the term *country* is used to describe VWP members. However, the VWP can and does include jurisdictions that the United States does not formally recognize as countries.

[3] The VWP constitutes one of a few exceptions under the Immigration and Nationality Act (INA) in which foreign nationals may be admitted into the United States without a valid visa.

[4] Canada and Bermuda are exceptions; they do not participate in the VWP, but their citizens do not need to obtain a nonimmigrant visa except in specified circumstances. For more information, see U.S. State Department, Bureau of Consular Affairs, *Citizens of Canada and Bermuda*, https://travel.state.gov/content/travel/en/us-visas/tourism-visit/citizens-of-canada-and-bermuda.html. In addition, citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands do not need a visa. For more information, see U.S. Citizenship and Immigration Services (USCIS), "Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands Fact Sheet," https://www.uscis.gov/save/resources/status-of-citizens-of-the-freely-associated-states-of-the-federated-states-of-micronesia-and-the#:~:text=To%20gain%20admission%20to%20the,or%20any%20other%20travel%20documentation.

[5] See CRS Report R46300, *Adding Countries to the Visa Waiver Program: National Security and Tourism Considerations*.

[6] For an example of this argument, see Riley Walter, *The Visa Waiver Program Is Still Great For America*, The Heritage Foundation, Issue Brief #4273, March 14, 2017, https://www.heritage.org/sites/default/files/2017-03/IB4664.pdf.

[7] For an example of this argument, see Federation for American Immigration Reform (FAIR), *The Visa Waiver Program: Suspend It or Eliminate It*, December 2015, https://www.fairus.org/issue/legal-immigration/visa-waiver-program-suspend-it-or-eliminate-it.

[8] *Nonimmigrants* are foreign nationals lawfully admitted to the United States for a specific purpose and limited period of time. Nonimmigrants are often referred to by the letter that denotes their subparagraph in the Immigration and Nationality Act (INA §101(a)(15)), such as H-2A agricultural workers, F-1 foreign students, or J-1 cultural exchange visitors. B nonimmigrant visas are issued to short-term visitors for business or pleasure. For more information, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

States.[9] Personal interviews are generally required, and consular officers use the Consular Consolidated Database (CCD) to screen visa applicants. The CCD indicates the outcome of any prior visa application and flags issues that may make the alien[10] ineligible for a visa under the *grounds of inadmissibility* found in the Immigration and Nationality Act (INA), which include criminal, terrorist, and public health grounds.[11] Consular officers are required to check the background of all aliens in the *lookout* databases, including the Consular Lookout and Support System (CLASS).

Eligible nationals from participating VWP countries must use the web-based Electronic System for Travel Authorization (ESTA)[12] to get an approved electronic travel authorization before embarking to the United States. ESTA authorization is generally valid for two years. VWP travelers are admitted into the United States for stays of up to 90 days.

The large-scale terrorist attacks in Paris in November 2015 and in Belgium in March 2016, which were perpetrated mainly by French and Belgian citizens who trained and/or fought with the Islamic State in the Syria-Iraq region,[13] increased the focus on potential security risks posed by the VWP. (France and Belgium are VWP member countries.) Prior to the December 2015 enactment of the Visa Waiver Improvement and Terrorist Travel Prevention Act (P.L. 114-113), all nationals from a VWP country were eligible to travel under the program—provided they received an ESTA approval. P.L. 114-113[14] changed eligibility for the VWP by prohibiting people who were present in certain countries since March 1, 2011, with limited exceptions, from traveling under the VWP. The specified countries include

- Iraq and Syria,
- any country designated by the Secretary of State as having repeatedly provided support for acts of international terrorism under any provision of law,[15] or
- any other country or area of concern[16] deemed appropriate by the Secretary of Homeland Security.[17]

[9] To obtain a nonimmigrant visa, a foreign national must submit an application and undergo a background check and usually an interview. For more information on temporary admissions, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

[10] This report uses the terms *foreign national*, *noncitizen*, and *alien*, interchangeably.

[11] The grounds of inadmissibility are found in INA §212(a) (8 U.S.C. §1182(a)). For more information, see CRS In Focus IF12662, *Immigration: Grounds of Inadmissibility*.

[12] ESTA became operational for all VWP countries on January 12, 2009; for more information, see "Electronic System for Travel Authorization," below.

[13] For more information, see CRS In Focus IF10561, *Terrorism in Europe*.

[14] For more details about P.L. 114-113, see **Appendix B**.

[15] Examples of acts that use the term "repeatedly provided support for acts of international terrorism," include Section 1754(c) of the National Defense Authorization Act for Fiscal Year 2019, Section 40 of the Arms Export Control Act (22 U.S.C. §2780), and Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. §2371). Currently, these countries are Cuba, the Democratic People's Republic of Korea (North Korea), Iran, and Syria. See DOS, "State Sponsors of Terrorism," https://www.state.gov/state-sponsors-of-terrorism/.

[16] The criteria to make the determination would include whether the presence of a foreign national in that area or country increases the likelihood that the foreign national is a credible threat to U.S. national security, whether a foreign terrorist organization has a significant presence in the area or country, and whether the country or area is a safe haven for terrorists.

[17] The Secretary of Homeland Security administers the VWP program. Section 402 of the Homeland Security Act of 2002 (HSA; P.L. 107-296), signed into law on November 25, 2002, states:

> The Secretary [of Homeland Security], acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following: ... (4) Establishing and

(continued...)

Currently, the prohibition affects those who were present in any of the following countries: Democratic People's Republic of Korea, Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.[18]

The statutory exceptions to this restriction apply to foreign nationals who were in one of the specified countries in order to perform military service in the armed forces of a VWP country, or to perform official duties as an employee of the VWP country. In addition, DHS can grant waivers on a case-by-case basis.[19] The following are general categories of travelers to these countries who may be eligible for a waiver: (1) individuals who traveled on behalf of international organizations, regional organizations, and sub-national governments on official duty; (2) individuals who traveled on behalf of a humanitarian non-governmental organization (NGO) on official duty; (3) individuals who traveled as journalists for reporting purposes; (4) individuals who traveled to Iran for legitimate business-related purposes following the conclusion of the Joint Comprehensive Plan of Action (July 14, 2015);[20] and (5) individuals who have traveled to Iraq for legitimate business-related purposes. There is no separate application for a waiver. A foreign national's eligibility for a waiver is determined during the ESTA application process. [21]

In addition, anyone who is a dual national of a VWP country and the Democratic People's Republic of Korea, Iran, Iraq, Sudan, or Syria is ineligible to travel under the VWP. As with the prohibition against those who were present in certain countries, the Secretary of Homeland Security has the authority to waive the prohibition on certain dual nationals if the Secretary determines that the waiver would be in the law enforcement or national security interests of the United States. As of the date of this report, DHS has not released any guidance on waivers for dual nationals.[22] DHS reports to Congress annually on these waivers, but the reports are not available to the public.

> administering rules, ... governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien [sic] lawfully admitted for permanent residence in the United States.

[18] DOS, *Visa Waiver Program,* https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html.

[19] INA §217(a)(12)(C); 8 U.S.C. §1187(a)(12)(C).

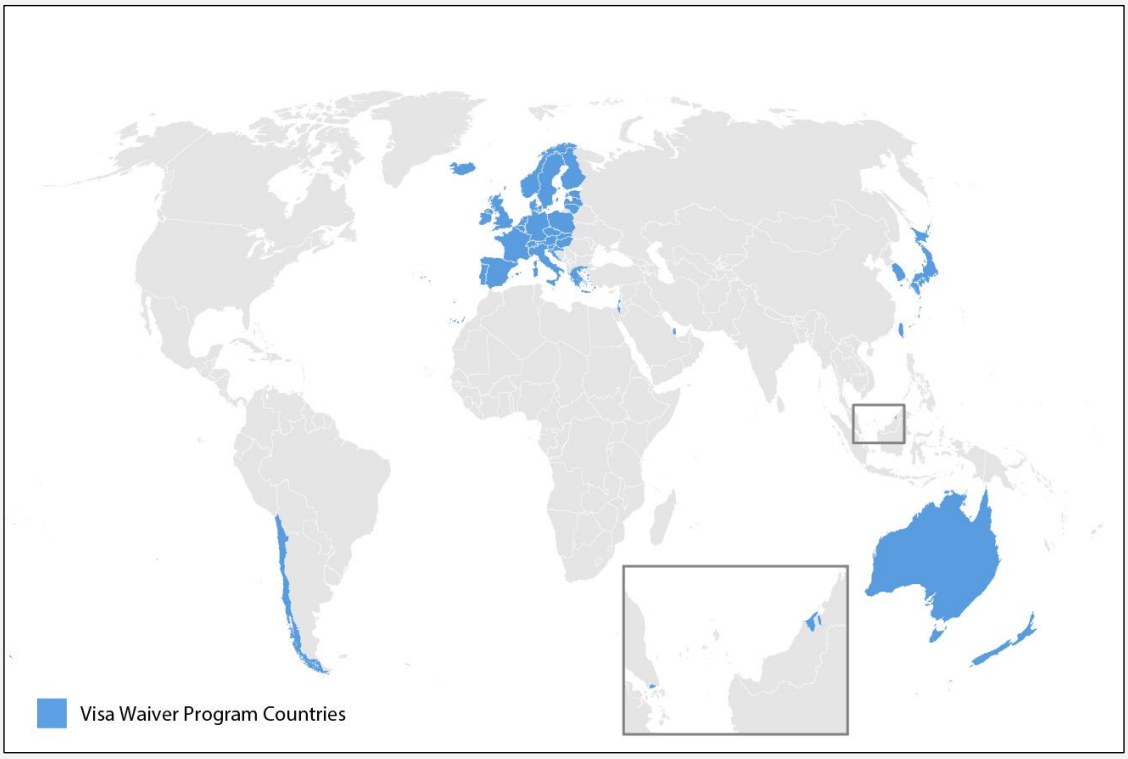
[20] On July 14, 2015, Iran and the six powers that have negotiated with Iran about its nuclear program since 2006 (the United States, the United Kingdom, France, Russia, China, and Germany) finalized a Joint Comprehensive Plan of Action (JCPOA). The JCPOA is intended to ensure that Iran's nuclear program can be used for purely peaceful purposes, in exchange for a broad lifting of U.S., European Union (EU), and United Nations (U.N.) sanctions on Iran. On May 8, 2018, President Trump announced that the United States would no longer participate in the JCPOA. On January 5, 2020, Iran declared it would no longer abide by the limitations of the deal. For more on the JCPOA, see CRS Report R43333, *Iran Nuclear Agreement and U.S. Exit*.

[21] U.S. Customs and Border Protection, *Visa Waiver Program Improvement and Terrorist Travel Prevention Act Frequently Asked Questions*, https://www.cbp.gov/travel/international-visitors/visa-waiver-program/visa-waiver-program-improvement-and-terrorist-travel-prevention-act-faq.

[22] For a discussion of some of the issues surrounding implementing the dual national provision, see Nahal Toosi, "Obama Aides Vexed by Visa Crackdown," *Politico*, April 12, 2016, https://www.politico.com/story/2016/03/congress-leahy-letter-221364.

Visa Waiver Program Countries
(as of October 15, 2024)

Andorra, Australia, Austria, Belgium, Brunei, Chile, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Poland, Portugal, Qatar, San Marino, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom.



Source: CRS. For list of current VWP countries, see U.S. Department of Homeland Security, "Visa Waiver Program Requirements," at https://www.dhs.gov/visa-waiver-program-requirements.

Note: While the term *country* is used to describe VWP members, the VWP can and does include jurisdictions that the United States does not formally recognize as countries.

Although the VWP allows certain nationals from participating countries to enter the United States without a visa, it has important restrictions. Aliens entering through the VWP are not permitted to extend their stays except for emergency reasons and then for only 30 days.[23] Additionally, with some limited exceptions, aliens entering through the VWP are not permitted to adjust to a permanent immigration status. In contrast, those entering the United States with a B visa may apply to extend their stay in the United States or to change to another nonimmigrant or immigrant (i.e., permanent) status.[24] An alien entering through the VWP who violates the terms of admission becomes deportable without any judicial recourse or review (except in asylum cases).[25] In

[23] This provision was amended by P.L. 106-406 to provide exceptions for nonimmigrants who enter under the VWP and require medical treatment.

[24] Noncitizens entering on B visas may be admitted for six months, and may apply to extend their stay for another six months.

[25] To receive asylum, a foreign national must demonstrate a well-founded fear of persecution in his or her home country based on one of five grounds—race, religion, nationality, membership in a particular social group, or political (continued...)

addition, a nonimmigrant who overstays the authorized period of admission becomes ineligible for future participation in the VWP.[26]

VWP Qualifying Criteria

To qualify for the VWP, a country[27] must

- offer reciprocal privileges to United States citizens;
- have a nonimmigrant visa refusal rate[28] of less than 3% for the previous year or an average percentage of less than 3% over the previous two fiscal years;
- issue electronic, machine-readable passports that contain a biometric identifier (i.e., e-passports);[29]
- issue tamper-resistant, machine-readable visa documents that incorporate biometric identifiers, which are verifiable at the country's port of entry;
- certify that it has in place mechanisms to validate machine-readable passports and e-passports at each port of entry;[30]
- enter into an agreement with the United States to report or make available through the International Criminal Police Organization (INTERPOL)[31] information about the theft or loss of passports no later than 24 hours after a theft or loss is reported to the VWP country;[32]
- certify, to the maximum extent allowed under the laws of the country, that it is screening each foreign national who is admitted to or departs from that country, using relevant INTERPOL databases and notices, or other means designated by

opinion—and meet other requirements. For more on asylum, see CRS Report R45539, *Immigration: U.S. Asylum Policy*.

[26] INA §217(a)(7) (8 U.S.C. §1187(a)(7)). For more information, see CRS Report R47848, *Nonimmigrant Overstays: Overview and Policy Issues*.

[27] For the list of requirements of an individual traveling under the VWP, see **Appendix A**.

[28] This rate represents the proportion of individuals whose applications for tourist or business visas have been rejected by U.S. consular officials in their home countries.

[29] Prior to the enactment of P.L. 114-113 only passports issued after October 26, 2006, had to be machine-readable and contain a biometric identifier. In August 2015, the Secretary of Homeland Security announced that to increase security of the VWP all travelers under the program would have to use an e-passport, but the requirement had not been put into effect before the enactment of P.L. 114-113. DHS, "Statement by Secretary Jeh C. Johnson on Intention to Implement Security Enhancements to the Visa Waiver Program," press release, August 6, 2015, https://www.dhs.gov/news/2015/08/06/statement-secretary-jeh-c-johnson-intention-implement-security-enhancements-visa; and telephone conversation with DHS Office of Legislative Affairs, November 3, 2015.

[30] This requirement was added by P.L. 114-113, and does not apply to travel between countries within the Schengen Area, which comprises of 25 European Union (EU) member states plus 4 non-EU countries. Within the Schengen Area, internal border controls have been largely eliminated, and individuals may travel without passport checks among participating countries. See European Commission, *Migration and Home Affairs: Schengen Area*, https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area_en.

[31] Although statute discusses sharing information on lost and stolen passports, the INTERPOL database includes other types of travel documents such as identity documents and visas. INTERPOL is the world's largest international police organization, with 194 member countries. For more information on INTERPOL see, https://www.interpol.int/Who-we-are/What-is-INTERPOL.

[32] P.L. 114-113 added the requirement that the reporting occur within 24 hours of the country being notified about the lost/stolen passport.

the Secretary of Homeland Security (this requirement applies only to countries that have an international airport);[33]

- accept the repatriation of any citizen, former citizen, or national against whom a final order of removal from the United States is issued no later than three weeks after the order is issued;
- enter into and fully implement[34] an agreement with the United States to share information regarding whether a national of that country traveling to the United States represents a threat to U.S. security or welfare; and
- be determined, by the Secretary of Homeland Security, in consultation with the Secretary of State, not to compromise the law enforcement or security interests of the United States by its inclusion in the program.

DHS, in consultation with DOS, has the authority to designate countries into the VWP. The Secretary of State must formally make the nomination; DHS then conducts a final review and certifies that the country meets all the requirements.

The Secretary of Homeland Security, in consultation with the Secretary of State, can suspend a country's participation in the program based on a determination that the country presents a high risk to U.S. national security.[35] In addition, countries can be immediately terminated from the VWP if an emergency occurs in the country that the Secretary of Homeland Security in consultation with the Secretary of State determines threatens the law enforcement or security interests of the United States.[36] For example, because of Argentina's economic collapse in December 2001,[37] and the increase in the number of Argentine nationals attempting to use the VWP to enter the United States and remain illegally past the 90-day period of admission,[38] Argentina was removed from the VWP in February 2002.[39] Likewise, Uruguay joined in 1999, but it was removed from the program in April 2003 because a recession led to an increasing

[33] This screening requirement was added by P.L. 114-113, and does not apply to those traveling between countries within the Schengen Area.

[34] The requirement to implement the agreement was added by the Visa Waiver Improvement and Terrorist Travel Prevention Act of 2015 (P.L. 114-113), enacted on December 18, 2015.

[35] The criteria to determine whether a country poses a "high risk" to national security include the number of nationals determined to be ineligible to travel to the United States under the VWP during the previous year; the number of nationals who were identified in U.S. government terrorism databases during the previous year, the estimated number of nationals who traveled to Iraq or Syria since March 1, 2011, to engage in terrorism; the country's capacity to combat passport fraud; the level of cooperation with U.S. counter-terrorism efforts; the adequacy of the country's border and immigration controls; and any other criteria determined by the Secretary of Homeland Security.

[36] An emergency is defined as (1) the overthrow of a democratically elected government; (2) war; (3) a severe breakdown in law and order in the country; (4) a severe economic collapse; and (5) any other extraordinary event in the program country where that country's participation could threaten the law enforcement or security interests of the United States. INA §217(c)(5)(B) (8 U.S.C. §1187(c)(5)(B)).

[37] Beginning in December 2001, Argentina experienced a serious economic crisis, including defaulting on loans by foreign creditors, devaluation of its currency, and increased levels of unemployment and poverty.

[38] In addition, many Argentine nationals were trying to use the VWP to obtain entry to the United States solely for the purpose of proceeding to the Canadian border and pursuing an asylum claim in Canada. According to Citizenship and Immigration Canada, between 1999 and 2001, more than 2,500 Argentines filed refugee claims in Canada after transiting the United States under the VWP. *Federal Register*, February 21, 2002, vol. 67, no. 35, p. 7944.

[39] While the number of Argentine nonimmigrant travelers to the United States declined between 1998 and 2000, the number of Argentines denied admission at the port of entry and the number of interior apprehensions increased. The Department of Justice (DOJ) in consultation with DOS determined that Argentina's participation in the VWP was inconsistent with the United States' interest in enforcing its immigration laws. (The Department of Homeland Security did not exist in February 2002, and authority for the VWP resided with the Attorney General in the DOJ.) *Federal Register*, February 21, 2002, vol. 67, no. 35, pp. 7943-7945.

number of Uruguayan citizens entering the United States under the VWP to live and work illegally.[40] No country has been removed from the VWP since 2003.

Additionally, there is a probationary status for VWP countries that do not maintain a low disqualification rate.[41] "Disqualification rate" is defined as the percentage of nationals from a country who either violated the terms of the nonimmigrant visa, who were excluded from admission to the United States at a port of entry, or who withdrew their application for admission at a U.S. port of entry. VWP countries are placed on probation when they have a disqualification rate of 2% to 3.5%.[42] Probationary countries with a disqualification rate less than 2% over a period prescribed in regulations (but not to exceed three years)[43] are removed from probationary status and may remain VWP countries.[44] Countries may also be placed on probation if an issue arises and more time is necessary to determine whether the continued participation of the country in the VWP is in the security interests of the United States. For example, in April 2003, Belgium was placed on provisional status because of concerns about the integrity of nonmachine-readable Belgian passports and the reporting of lost or stolen passports.[45] DHS completed another country review of Belgium in 2005 and removed the country from probationary status. Belgium is the last country to have been placed on probation. In August 2023, DHS placed certain limitations on Hungarians traveling under the VWP because of their government's inability to satisfy the requirements of the VWP as well as concerns over the country's simplified naturalization process that DHS deemed susceptible to fraud and corruption.[46] DHS reduced the validity of ESTA authorization for Hungarian citizens—from two to one years—and made it valid for only one entry to the United States (typically, ESTA authorization is valid for multiple entry over a two year period; see the "Electronic System for Travel Authorization" section below).

Nonimmigrant Visa Refusal Rate Waiver

Section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53)[47] allows the Secretary of Homeland Security, in consultation with the Secretary of State, to waive the nonimmigrant visa refusal rate requirement for admission to the VWP after the Secretary of Homeland Security certifies to Congress that

[40] Between 2000 and 2003, Uruguay experienced a recession causing its citizens to enter under the VWP to live and work illegally in the United States. In 2002, Uruguayan nationals were two to three times more likely than all nonimmigrants on average to have been denied admission at the port of entry. Uruguayan air arrivals had an apparent overstay rate more than twice the rate of the average apparent overstay rate for all air arrival nonimmigrants. *Federal Register*, March 7, 2003, vol. 68, no. 45, pp. 10954-10957.

[41] INA §217(f)(4) (8 U.S.C. §1187(f)(4)).

[42] VWP countries with a disqualification rate of 3.5% or greater will be terminated from the program (INA §217(f)(1)(C); 8 U.S.C. §1187(f)(1)(C)).

[43] INA §217(h)(3)(C) (8 U.S.C. §1187(h)(3)(C)).

[44] The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208).

[45] U.S. Department of Justice, Immigration and Naturalization Service, "Attorney General's Evaluations of the Designations of Belgium, Italy, Portugal, and Uruguay as Participants Under the Visa Waiver Program," 68 *Federal Register*, 10954-10957, March 7, 2003, https://www.govinfo.gov/content/pkg/FR-2003-03-07/pdf/03-5244.pdf.

[46] DHS, "Hungary Electronic System for Travel Authorization Validity Period," 88 *Federal Register* 50759, August 2, 2023, https://www.govinfo.gov/content/pkg/FR-2023-08-02/pdf/2023-16412.pdf.

[47] P.L. 110-53 (H.R. 1), signed into law on August 3, 2007. For more details on the changes to the VWP in this act, see **Appendix B**.

- an air exit system is in place that can verify the departure of not less than 97% of foreign nationals who exit through U.S. airports,[48] and
- the electronic travel authorization system is operational.[49]

To participate in the program, a country that receives a visa refusal rate waiver also must

- meet all the other requirements of the program;
- be determined by the Secretary of Homeland Security to have a totality of security risk mitigation measures that provide assurances that the country's participation in the program would not compromise U.S. law enforcement and security interests, or the enforcement of U.S. immigration laws;
- have had a sustained reduction in visa refusal rates, and have existing conditions for the rates to continue to decline;
- have cooperated with the United States on counterterrorism initiatives and information sharing before the date of its designation, and be expected to continue such cooperation; and
- have had, during the previous fiscal year, a nonimmigrant visa refusal rate of less than 10%, or an overstay rate that did not exceed the maximum overstay rate established by the Secretaries of DHS and DOS for countries receiving waivers of the nonimmigrant visa refusal rate to participate in the program.

P.L. 110-53 also specified that in determining whether to waive the nonimmigrant visa refusal rate requirement, the Secretary of Homeland Security, in consultation with the Secretary of State, may take into consideration other factors affecting U.S. security, such as the country's airport security standards and whether the country has an effective air marshal program.

The nonimmigrant visa refusal rate waiver became available in November 2008.[50] However, under P.L. 110-53, the Secretary of Homeland Security's authority to waive the nonimmigrant visa refusal rate was suspended on July 1, 2009, and is to remain suspended until the air exit system is able to match an alien's *biometric* information with relevant watch lists and manifest

[48] There was disagreement between some critics and DHS regarding what needed to be verified. Some contended that congressional intent was to have a functional entry-exit system that would be able to match arrival and departure records and know which aliens failed to depart from the United States rather than just matching the entry records with the records of those who were known to have departed from the United States. For example, see S. 203 introduced in the 111th Congress, which attempted to clarify the language in this provision. U.S. Congress, Senate Committee on Judiciary, Subcommittee on Terrorism, Technology and Homeland Security, *The Visa Waiver Program: Mitigating Risks to Ensure Safety to All Americans*, 110th Cong., 2nd sess., September 24, 2008.

[49] DHS determined that the law permitted it to utilize the waiver when ESTA was functional but before it was mandatory for all VWP travelers. Critics did not agree with this interpretation and thought that ESTA should have been mandatory for all VWP travelers before new countries were designated into the program. When the new countries entered the program, their citizens were required to use ESTA before travelling to the United States. U.S. Government Accountability Office, *Visa Waiver Program: Actions Are Needed to Improve Management of the Expansion Process, and to Assess and Mitigate Program Risks*, GAO-08-967, September 2008.

[50] According to the final rule, "To waive the low nonimmigrant visa refusal rate requirement, the Secretary of Homeland Security must certify to Congress that: (i) The Electronic System for Travel Authorization (ESTA) is 'fully operational,' and (ii) an air exit system is in place that can verify the departure of not less than ninety-seven percent of foreign nationals who exit through U.S. airports. Those certifications have been made." DHS, " Additional Countries Designated for the Visa Waiver Program," 73 *Federal Register* 67711, November 17, 2008, https://www.federalregister.gov/documents/2008/11/17/E8-27062/additional-countries-designated-for-the-visa-waiver-program.

information for 97% of air exits.[51] U.S. Customs and Border Protection (CBP) is implementing biometric air exit systems across the country. As of July 2022, CBP collects biometric data for approximately 80% of in-scope travelers.[52]

Electronic System for Travel Authorization

P.L. 110-53 mandated that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement an electronic travel authorization system through which each alien electronically provides, in advance of travel, the biographical information necessary to determine whether the alien is eligible to travel to the United States and enter under the VWP. The system as implemented is known as the Electronic System for Travel Authorization (ESTA) and became fully operational for all VWP visitors traveling to the United States on January 12, 2009.[53] There is a $21 fee for travelers who use ESTA.[54]

ESTA screens applicants' biographical information against a number of security databases, including the Terrorist Screening Database, TECS (not an acronym, but a system used by CBP officers to screen arriving travelers to the United States),[55] the Automated Targeting System, and INTERPOL's Lost and Stolen Passport database. ESTA alerts the applicant whether they have been approved to travel; [56] if not approved, the applicant must obtain the relevant visa in order to travel to the United States. The information required by ESTA includes

- **biographical information** including name, birth date, country of citizenship, other citizenships (i.e., dual citizenship), previous citizenships, country of

[51] Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), as amended, requires DHS to implement an automatic, biometric entry-exit system that covers all noncitizen travelers into and out of the United States and that identifies visa overstayers. For more information, see "Debate over Biometric Exit Capacity," below.

[52] CBP's previously stated goal was 97%, but it is no longer pursuing that goal, despite it being one of the requirements to reinstate the waiver of the nonimmigrant visa refusal rate. CBP reported to Government Accountability Office (GAO) that the 97% goal is currently unattainable because it relies on private-public partnerships. Airline and airport partners are voluntary participants in air exit, and they can choose to verify travelers' identities manually instead of FRT for any reason. CBP does not have the resources to be at every departure gate and must rely on voluntary participation by airline partners.(GAO, *Facial Recognition Technology: CBP Traveler Identity Verification and Efforts to Address Privacy Issues*, GAO-22-106154, July 27, 2022, p. 15, https://www.gao.gov/assets/gao-22-106154.pdf; for more information, see CRS Report R47541, *Immigration: The U.S. Entry-Exit System*).

[53] Entrants under the VWP from countries that receive a waiver of the nonimmigrant visa refusal rate (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Slovakia, and South Korea) had to use the system starting on the date of their formal admission to the program. For all the countries except Malta, that date was November 17, 2008. Malta was formally designated into the VWP on December 30, 2008. DHS, "Electronic System for Travel Authorization (ESTA) Advisory Statement," November 6, 2008; DHS, "Electronic System for Travel Authorization: Mandatory Compliance Required for Travel Under the Visa Waiver Program," 73 *Federal Register* 67354, November 13, 2008.

[54] The fee was instituted on September 8, 2010. Originally the fee was $14: $4 to cover the costs of administering ESTA and $10 for the travel promotion fee established by Congress in the Travel Promotion Act of 2009 (§9 of P.L. 111-145) (DHS, CBP, "DHS, CBP Announce Interim Final Rule For ESTA Fee," press release, August 6, 2010). The sunset date has been extended multiple times, by P.L. 111-198, Title VI of P.L. 113-235, Title II of P.L. 115-123, and Division I, Title VIII of P.L. 116-94. Most recently, the Consolidated Appropriations Act, 2022 (P.L. 117-103) extended the authority of Brand USA to receive ESTA fees through October 31, 2028. Division I, Title VIII of P.L. 116-94 also approved raising the ESTA fee from $14 to $21, which went into effect on May 20, 2022. DHS continues to receive $4 and the remaining $17 goes to the travel promotion fee. (DHS, CBP, "Electronic System for Travel Authorization (ESTA) Fee Increase," 87 *Federal Register* 30769, May 20, 2022, https://www.govinfo.gov/content/pkg/FR-2022-05-20/pdf/2022-10869.pdf.)

[55] TECS, managed by DHS, is an updated version of the Treasury Enforcement Communications System.

[56] In most cases, the determination process is almost instantaneous. Under statute, ESTA determinations are not reviewable by the courts.

residence, telephone number, other names/aliases, parents' names, national identification number (if applicable), employment information (if applicable), city of birth;[57]

- **passport information** including number, issuing country, issuance date, and expiration date; and
- **travel information** including departure city, flight number, U.S. contact information, and address while in the United States.[58]

Eligibility to travel, which is determined by ESTA, is valid for two years or until the person's passport expires (whichever comes first).[59] During this time, the traveler may make multiple trips to the United States. Throughout this period, the ESTA system continually vets approved individuals' information against the aforementioned databases. The Secretary of Homeland Security has the authority to shorten or revoke the determination of eligibility at any time.[60] Notably, a determination under ESTA that an alien is eligible to travel to the United States does not constitute a determination that the alien is admissible. Admissibility determinations are made by CBP inspectors at the ports of entry (the same is true for visa holders).[61]

Arrival and Departure Inspections

Because travelers under the VWP do not have to get a visa, they are not inspected by a U.S. government official until they arrive at a U.S. port of entry. Nonetheless, in addition to getting authorization through ESTA, prior to the alien's arrival, an electronic passenger manifest is sent from the airline or commercial vessel to CBP officials, as is done for all airline and commercial vessels departing from a foreign country destined for a U.S. port of entry. This manifest is checked against security databases.

Since October 1, 2002, passenger arrival and departure information on individuals entering and leaving the United States under the VWP has been electronically collected from airlines and cruise lines, through CBP's Advanced Passenger Information System (APIS) system.[62] APIS collects carrier information (e.g., flight number, airport of departure, and other information), as well as travelers' personal information, including complete name, date of birth, passport number,

[57] In November 2014, DHS added new questions to ESTA in response to security concerns. DHS, CBP, *ESTA - New questions to the ESTA application*, CBP INFO Center, Washington, DC, November 3, 2014, https://help.cbp.gov/app/answers/detail/a_id/1756/~/esta—new-questions-to-the-esta-application. Although the administration was already asking the questions, P.L. 114-113 statutorily added the requirement that nationals be queried about multiple and previous citizenships.

[58] Much of the information is the same that is required on the nonimmigrant visa waiver arrival/departure form (Form I-94W). According to DHS, when developing ESTA, the department had to balance the need for biographic information with the requirement that the participating countries did not view applying for an approval under ESTA as equivalent to applying for a visa. If countries had interpreted applying for an authorization under ESTA as having the same burden as applying for a visa, these countries might have required that U.S. citizens traveling to their countries obtain a visa.

[59] Under statute, the maximum period of time is set in regulation by the Secretary of Homeland Security but cannot exceed three years.

[60] INA §217(h)(3)(C); 8 U.S.C. §1187(h)(3)(C). The provision giving the Secretary of Homeland Security the authority to shorten an ESTA validity period was enacted as part of P.L. 114-113.

[61] For more information on permission to travel to the United States versus admission, see "Nonimmigrant Entry/Exit Control" in CRS Report R47848, *Nonimmigrant Overstays: Overview and Policy Issues*.

[62] APIS is required pre-departure (i.e., before securing the doors) for all air carrier flights to and from the United States. For inbound cruise ships the data must be received 96 hours before arrival at a U.S. port, and for cruise ships leaving the United States, the data must be transmitted 60 minutes before departure. For private aircraft, a passenger and crew manifest listing all persons traveling on the aircraft must be sent electronically using the online eAPIS system at least one hour prior to departure for an inbound or outbound international flight.

country of citizenship, and country of residence.[63] APIS sends the data to the DHS's Arrival and Departure Information System (ADIS) for matching arrivals and departures and reporting purposes. If the carrier fails to submit the information, an alien may not enter under the VWP.

At U.S. ports of entry (POEs), CBP officers observe and question foreign nationals, examine passports, and conduct checks against a computerized system to determine whether they are admissible to the United States. Primary inspection consists of a brief interview with a CBP officer, a check of the traveler's documents, a query of the Interagency Border Inspection System (IBIS),[64] and the entry of certain biographic and biometric information into the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) system. The US-VISIT system uses biographical (e.g., passport information) and biometric identification (finger scans and digital photographs) to check identity.[65] Officers at POEs collect the following information on aliens entering under the VWP: name, date of birth, nationality, gender, passport number, country of issuance, a digital photograph, and, in some cases, prints for both index fingers.[66] Primary inspections are typically quick; however, if the CBP officer is suspicious that the traveler may be inadmissible under the INA or in violation of U.S. law, the traveler is referred to a secondary inspection. Those travelers sent to secondary inspections are questioned extensively, travel documents are further examined, and additional databases are queried.[67]

Additionally, the Implementing Recommendations of the 9/11 Commission Act (P.L. 110-53) required that the Secretary of Homeland Security, no later than one year after enactment (i.e., by August 3, 2008), establish an exit system that records the departure of every alien who entered under the VWP and left the United States by air. The exit system is required to match the alien's biometric information against relevant watch lists and immigration information, and compare such biographical information against manifest information collected by airlines to confirm that the alien left the United States.

In April 2008, DHS published a Notice of Proposed Rulemaking in the *Federal Register* that would have created biometric exit procedures at airports and seaports for international visitors.[68] DHS was expected to publish the final rule for this system by October 15, 2008.[69] However, in

[63] The transmission, retention policies, data security, and redress procedures pertaining to APIS data (and other Passenger Name Record data) received by CBP is to comport with the US/EU Passenger Name Record Agreement. For more information, see CRS Report RS22030, *U.S.-EU Cooperation Against Terrorism*.

[64] ADIS feeds information to the Interagency Border Inspection System (IBIS). IBIS is a database of suspect individuals, businesses, vehicles, aircraft, and vessels that is used during inspections at the border. IBIS interfaces with the FBI's National Crime Information Center (NCIC), the Treasury Enforcement and Communications System (TECS II), National Automated Immigration Lookout System (NAILS), Non-immigrant Information System (NIIS), CLASS and TIPOFF terrorist databases. Because of the numerous systems and databases that interface with IBIS, the system is able to obtain such information as an alien's criminal history and whether an alien is wanted by law enforcement. DHS, CBP, *IBIS- General Information*, Washington, DC, July, 31, 2013.

[65] For more information on US-VISIT, see CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*.

[66] Fingerprints were taken at POEs. GAO, *Information Technology: Homeland Security Needs to Improve Entry Exit System Expenditure Planning*, GAO-03-563, June 2003, p. 9, https://www.gao.gov/assets/gao-03-563.pdf. Today, "foreign travelers who have traveled to the United States previously may no longer need to provide fingerprints, as their identity will be confirmed through the touchless facial biometric process." DHS, CBP, "CBP Completes Simplified Arrival Expansion at All US Airports," press release, June 2, 2022, https://www.cbp.gov/newsroom/national-media-release/cbp-completes-simplified-arrival-expansion-all-us-airports.

[67] For more information on the screening process, see CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*.

[68] DHS, "Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure," 73 *Federal Register* 22065, April 24, 2008.

[69] CRS analyst conversation with U.S. Department of Homeland Security Congressional Affairs, September 22, 2008.

legislation that became law on September 30, 2008,[70] Congress required DHS to complete and report on at least two studies testing biometric exit procedures at airports.[71] After piloting various biometric programs, CBP, in partnership with the Transportation Security Administration (TSA), is currently deploying the Traveler Verification Service (TVS).[72] TVS is a private-public partnership[73] that uses facial recognition technology to verify travelers' identities. TVS is operational in all 238 international airports in the United States for entry and 44 U.S. airports for exit.[74]

Another step in implementing an exit system occurred in December 2011, when DHS announced an agreement with Canada to share entry records so that an entry into Canada along the land border would be counted as an exit in U.S. records.[75] This is part of the joint *Beyond the Border* initiative.[76]

Trends in Use of the VWP

Admissions to the United States of temporary visitors for business or pleasure from VWP countries and non-VWP countries increased annually in the decade before the COVID-19 pandemic. Such admissions to the United States increased from 40.3 million in FY2010 to 73.9 million in FY2019.[77] Visitor admissions fell sharply in FY2020 (to 32.9 million) and FY2021 (to 10.4 million) due to the decline in international travel associated with the pandemic.[78] Visitor admissions started to rise again in FY2022, climbing to 39.2 million, and continued to rise to 59.8 million in FY2023.

[70] P.L. 110-329.

[71] One pilot tested DHS's recommended solution that carriers collect biometrics from passengers; the other pilot tested CBP officers collecting passenger biometrics at the boarding gate.

[72] For more information, see CRS In Focus IF11634, *Biometric Entry-Exit System: Legislative History and Status*.

[73] Private partners include airports and airlines.

[74] CBP, "Airports: CBP Biometrics," https://www.cbp.gov/travel/biometrics/airports? state=All&port_of_entry= Air+Exit.

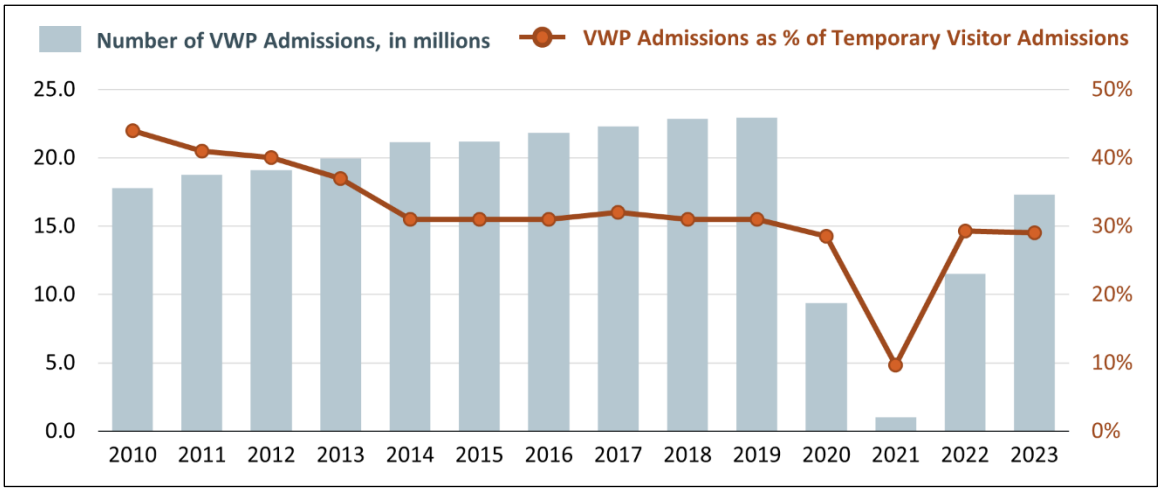
[75] The White House, "Declaration by President Obama and Prime Minister Harper of Canada - Beyond the Border, press release, February 4, 2011, https://obamawhitehouse.archives.gov/the-press-office/2011/02/04/declaration-president-obama-and-prime-minister-harper-canada-beyond-bord.

[76] When the agreement was signed in 2011, the two countries shared information only about third-country nationals (including permanent residents of Canada and lawful permanent residents of the United States). In 2019, the agreement expanded to include Canadian and U.S. citizens. For more information, see DHS, "Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness" https://www.dhs.gov/beyond-border.

[77] DHS, *Yearbook of Immigration Statistics*, multiple years; Table 25.

[78] A sharp decline in international travel associated with the COVID-19 pandemic was likely due to many factors, including travel restrictions, and quarantine, testing, and vaccination requirements, among others. For more information, see CRS Report R47857, *U.S. Tourism: Economic Impacts and Pandemic Recovery*.

Figure 1. Number of Visa Waiver Program (VWP) Admissions, FY2010-FY2024, and VWP Percentage of All Temporary Visitor Admissions



Source: CRS analysis of data from U.S. Department of Homeland Security, *Yearbook of Immigration Statistics,* multiple years; Table 25.

Note: Number of countries participating in the VWP at the end of the fiscal year: FY2010-FY2012, 36; FY2013, 37; FY2014-FY2019, 38; FY2020-FY2021, 39; FY2022-FY2023, 40. Temporary visitor admissions count those who entered with B visas, those who entered under the Guam Visa Waiver Program and the Guam-CNMI visa waiver program, and those who entered under the VWP. VWP admissions count those who entered under the VWP but not under the Guam VWP or the G-CNMI VWP.

Figure 1 shows the number of admissions under the VWP and VWP admissions as a percentage of all temporary visitor admissions.[79] From FY2010-FY2019, the *number of admissions* under the VWP steadily increased. However, the *proportion* of total visitor admissions represented by VWP admissions declined from 44% to 31%.[80] From FY2014-FY2019, the percentage of all visitor admissions that were made up of VWP admissions remained relatively stable, around 31%. However, during the COVID-19 pandemic, this percentage dropped precipitously. In FY2021, VWP admissions constituted 9.7% of all temporary visitor admissions to the United States.[81] In FY2023 the percentage was almost back to pre-pandemic levels, at 29%.

Policy Issues

The VWP is supported by the U.S. travel and tourism industry and the business community. The travel and tourism industry views the VWP as a tool to facilitate and encourage foreign visitors

[79] Temporary visitors are aliens who entered with B visas, those who entered under the Guam Visa Waiver Program (which ended in 2009), the Guam-CNMI visa waiver program, and those who entered under the VWP.

[80] Visitor admissions from large, non-VWP countries have increased during this period, thereby reducing the proportion of VWP visitor admissions to the United States. For example, in 2018 Brazil, China, and India were among the top 10 overseas countries by visitor volume and accounted for 6.5 million visitors to the United States that year. (National Travel and Tourism Office, *Non-Resident Arrivals to the United States: Overseas, Canada, Mexico, and International, Trend Line Data—Country of Residence*, November 2019).

[81] The COVID-19 pandemic caused a sharp decline in international travel. As a result, visitor volume to the United States fell sharply among both VWP and non-VWP counties. The proportion of VWP travelers to other temporary visitors dropped precipitously in 2021. This may be due various reasons, including changes in travel trends from many regions around the world. For example, South America (which has one VWP member country) greatly increased its share of nonimmigrant admissions during the pandemic, from 8% in FY2019 to 18% in FY2021. (DHS, *Yearbook of Immigration Statistics*, FY2021, Table 26).

for business and pleasure; increased foreign tourism and commerce in the United States contributes to increased economic growth.[82]

The Department of State also supports the VWP. DOS argues that by waiving the visa requirement for travelers from high-volume/low-risk countries, consular workloads are significantly reduced, allowing for streamlined operations, cost savings, and concentration of resources on greater-risk nations in the visa process.[83] The travel industry argues that DOS would have to hire many more consular officers to meet the demand for B visas from VWP countries absent the program.[84]

While there tends to be agreement that the VWP benefits the U.S. economy by facilitating legitimate travel, there is disagreement on the VWP's impact on national security, with some arguing that the VWP presents a significant security risk and others arguing that it enhances national security.

Security

There has been significant debate about whether the VWP increases or decreases national security. As discussed, travelers under the VWP do not undergo the in-person screening generally required to receive a B nonimmigrant visa. Moreover, ESTA is a biographical system and cannot be used to run checks against databases that use biometrics as identifiers, such as DHS's Automated Biometric Identification System (IDENT) and FBI's Next Generation Identification (NGI).[85] While VWP travelers are not checked against these systems before boarding a plane or ship, they are checked against these systems through US-VISIT when they are at a U.S. port of entry.[86] In addition, some contend that the relaxed documentary requirements of the VWP increase immigration fraud and decrease security.[87]

Others argue that the VWP enhances security by setting standards for travel documents and information sharing.[88] For example, all travelers entering under the VWP must present e-

[82] For more information, see CRS Report R46300, *Adding Countries to the Visa Waiver Program: National Security and Tourism Considerations* and CRS Report R47857, *U.S. Tourism: Economic Impacts and Pandemic Recovery*.

[83] U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *The Visa Waiver Program: Implications for U.S. National Security*, Testimony of Edward J Ramotowski, Deputy Assistant Secretary for Visa Services, U.S. Department of State, 114th Cong., 1st sess., March 12, 2015.

[84] For example, in his testimony before the House Immigration and Claims Subcommittee on February 28, 2002, William S. Norman, President and Chief Executive Officer of the Travel Industry Association of America, stated that it would take hundreds of new consular staff and tens of millions of dollars to issue visas to visitors currently entering under the VWP. Since Mr. Norman testified, the number of people entering under the VWP has increased by more than 5 million entrants per year.

[85] IDENT is the primary DHS-wide system for the biometric identification and verification of individuals encountered in DHS mission-related processes. NGI is a DHS-wide system for the storage and processing of biometric and limited biographic information. For more information on IDENT, see DHS, *Privacy Impact Assessment for the Automated Biometric Identification System (IDENT)*, July 31, 2006, p. 2, http://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_usvisit_ident_final.pdf. For more information on NGI, see Federal Bureau of Investigation, *Next Generation Identification (NGI)*, https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi.

[86] For more information, see CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*.

[87] For an example of this argument, see "Congressman Claims Allowing Poland Visa-Free Travel to the US Would Pose Security Threat," workpermit.com, June 20, 2012, http://www.workpermit.com/news/2012-06-20/us/congressman-claims-allowing-poland-visa-free-travel-to-us-would-pose-security-threat.htm.

[88] For an example of this argument, see Heritage Foundation, *The Visa Waiver Program: A Security Partnership*, Fact Sheet #66, Washington, DC, June 25, 2010.

passports, which tend to be more difficult to alter than other types of passports.[89] Unlike ESTA authorization, many B visas are valid for 10 years[90] and are not continuously vetted.[91]

Another concern about the national security implications of the program centers on DHS's ability to conduct reviews of the current VWP countries. In 2002, Congress mandated that DHS evaluate each VWP country every two years to make sure that their continued participation was in the security, law enforcement, and immigration interests of the United States.[92] In a review of the Visa Waiver Program Office's (VWPO's) administration of the VWP, the DHS's Office of the Inspector General found that as of July 2012, there were 11 (out of 36) reports that took longer than the congressionally mandated two-year reporting cycle.[93] A Government Accountability Office (GAO) report found that as of October 31, 2015, approximately 25% of the most recent reports were submitted or remained outstanding at least five months past the statutory deadline. Since then, DHS has made progress in meeting the mandated two-year reporting cycle.[94]

Debate over Biometric Exit Capacity

As discussed, the Secretary of Homeland Security's authority to waive the nonimmigrant visa refusal rate has been suspended until the air exit system is able to match an alien's biometric information with relevant watch lists and manifest information.[95] Some contend that the current biographic exit system provides suitable data for most security and immigration enforcement activities, and that the cost of implementing a biometric exit system would not justify the small increase in additional security.[96] In the past, others expressed concerns about the general security

[89] There is not a specific requirement to present an e-passport when entering under the VWP. Any passports issued after October 26, 2006, and used by VWP travelers to enter the United States are required to have integrated chips with information from the data page (i.e., e-passports). Most passports are valid for 10 years, and thus, it is likely that by October 2016, all VWP entrants had e-passports.

[90] The length of validity of a visa is mostly dependent on reciprocity with the United States (i.e., that visas from that country for U.S. citizens are valid for the same period of time). For a full list of reciprocity schedules, see DOS, *U.S. Visa: Reciprocity and Civil Documents by Country*, https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country.html.

[91] CBP screens travelers on nonimmigrant visitor visas at ports of entry each time they enter the United States.

[92] P.L. 107-53, §711.

[93] VWPO cited a number of reasons for the reporting delays, including inadequate staffing of the office to manage the workload, and not receiving intelligence assessments in a timely manner. However, VWPO officials stated that "these delays have not posed any undue risks or threats to U.S. security interests, since any issues within a VWP country that might affect its continued compliance with VWP requirements are continuously monitored." DHS, Office of the Inspector General, *The Visa Waiver Program*, OIG-13-07, Washington, DC, November 2, 2012, p. 12, https://www.oig.dhs.gov/sites/default/files/assets/Mgmt/2013/OIG_13-07_Nov12.pdf.

[94] U.S. Government Accountability Office (GAO), "Recommendations for Executive Action." in *Visa Waiver Program: DHS Should Take Steps to Ensure Timeliness of Information Needed to Protect U.S. National Security*, GAO-16-498, for the May 5, 2016, https://www.gao.gov/products/GAO-16-498.

[95] The suspension can be lifted once the biometric exit system captures 97% of in-scope travelers (P.L. 110-53; IIRIRA §110, as amended). Currently, the system captures approximately 80% of in-scope air travelers on participating flights. CBP reported to GAO that the 97% goal is currently unattainable because it relies on private-public partnerships. Participation by airlines is voluntary and they can choose to manually verify travelers' identities instead of FRT for any reason; CBP does not have the resources to be at every departure gate and must rely on airline partners. CBP's operational testing found that FRT is not always used for air exit due to "factors such as camera outages, incorrectly configured systems at boarding gates, and airline agents' decisions to exclude certain categories of people, such as families or individuals using wheelchairs, to speed up the boarding process." GAO, *Facial Recognition Technology*, GAO-22-106154, pp. 14-15. For more information, see CRS Report R47541, *Immigration: The U.S. Entry-Exit System*.

[96] Testimony of James Jay Carafano, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *Next Steps for the Visa Waiver Program*, 112th Cong., 1st sess., December 7, 2011.

of the program and argued that until more security measures are in place, such as a biometric exit capacity, more countries should not be designated into the program.[97]

Information Sharing

According to GAO, all VWP countries provide data on lost and stolen passports (LASP) to the United States.[98] However, concerns have been raised about information sharing on LASP, specifically whether countries are reporting data in a timely manner.[99] The mechanisms to obtain data on LASP have differed over time (e.g., reporting to the U.S. embassy, access to a common database) and by country (e.g., MOUs, Diplomatic Notes).[100] While DHS receives a few countries' LASP data via direct links to those countries' databases, most data on LASP come from the International Criminal Police Organization's (INTERPOL's) Stolen and Lost Travel Documents (SLTD) database[101]—DHS's preferred method of data sharing. Notably, ESTA screens passport information using the INTERPOL database. CBP also accesses LASP data via INTERPOL.[102] P.L. 114-113 mandated that the reporting of lost or stolen passports be done no later than 24 hours after a theft or loss was reported to the VWP country.

As discussed, all VWP countries are also required to enter into information-sharing agreements with the United States on whether their citizens or nationals travelling to the United States represent a security or criminal threat. All VWP countries have entered into the required arrangements for the sharing of information on known and suspected terrorists pursuant to Homeland Security Presidential Directive 6 (HSPD-6),[103] and have also signed Preventing and Combating Serious Crime (PCSC) Agreements or equivalent agreements with the United States for the sharing of information on potential serious criminals and terrorists. DHS, DOJ, and DOS worked with VWP countries to fully implement HSPD-6 arrangements and PCSC Agreements.[104] P.L. 114-113 requires that the HSPD-6 arrangements and PCSC Agreements be signed and fully implemented before a country can be designated into the VWP. A GAO report released in May 2016 found that, as of that date, more than one-third of VWP countries had not shared terrorist

[97] Statement of Chairman Elton Gallegly, U.S. Congress, House Committee on the Judiciary, Subcommittee on Immigration Policy and Enforcement, *Next Steps for the Visa Waiver Program*, 112th Cong., 1st sess., December 7, 2011.

[98] GAO, *Visa Waiver Program: Additional Actions Needed to Address Risks and Strengthen Overstay Enforcement*, GAO-12-287T, December 7, 2011; GAO, *Visa Waiver Program: DHS Should Take Steps to Ensure Timeliness of Information Needed to Protect U.S. National Security*, GAO-16-498, May 2016, p. 11.

[99] VWP passports are supposedly highly valued since the bearer does not need a visa to enter the United States. For example, see GAO, *Visa Waiver Program: Additional Actions Needed to Address Risks and Strengthen Overstay Enforcement*, GAO-12-287T, December 7, 2011. See also, Giulia Paravicini, "EU's Passport Fraud 'Epidemic'," *Politico*, January 28, 2016, Europe Edition, http://www.politico.eu/article/europes-fake-forged-stolen-passport-epidemic-visa-free-travel-rights/.

[100] In the past, before access to and the content of the INTERPOL database were reliable, DHS required countries to submit LASP data to the U.S. embassies in those countries.

[101] The United States began providing information on LASP to the U.S. National Central Bureau of the International Criminal Police Organization (INTERPOL) in May 2004. The INTERPOL Stolen and Lost Travel Document (SLTD) database is available to law enforcement and immigration authorities worldwide. INTERPOL, *Border Management*, https://www.interpol.int/How-we-work/Border-management.

[102] GAO, *Visa Waiver Program: DHS Should Take Steps to Ensure Timeliness of Information Needed to Protect U.S. National Security*, GAO-16-498, May 2016, p. 13.

[103] U.S. President (George W. Bush), "Homeland Security Presidential Directive/HSPD–6—Directive on Integration and Use of Screening Information To Protect Against Terrorism," *Weekly Compilation of Presidential Documents*, September 16, 2003, p. 1174. For a discussion of HSPD-6, see CRS Report R42336, *Terrorist Watch List Screening and Background Checks for Firearms*.

[104] E-mail from DHS, Office of Legislative Affairs, November 16, 2015.

identity information through the HSPD-6 agreements, and a similar percentage of VWP countries had not shared criminal history information through the PCSC agreements.[105] No countries were removed from the program, but

> DHS has reported progress towards implementing the required agreements and, in cases where agreements are not fully implemented, time frames and steps for bringing VWP countries into compliance with the information-sharing requirements. As a result, information sharing under the required agreements has improved.[106]

In 2022, congressional interest in the parameters of information sharing agreements increased after a British national traveled under the VWP and held four congregants hostage at a synagogue in Texas. During a Senate Homeland Security and Governmental Affairs hearing, a DHS official stated that this individual

> had several criminal and potentially terrorist related interactions with the UK government. However, none of these resulted in information that rose to the threshold for passing to the United States. And so the Department is looking to reevaluate the information sharing agreements we have under the Visa Waiver Program and looking for opportunities to close any gaps on the sharing of similar ... .[107]

Terrorism, Foreign Fighters, and the VWP

Since 9/11, significant national security concerns about the VWP came from fears that terrorists could enter the United States under the VWP. After the aforementioned 2015 terrorist attacks in Europe (see the "Current Policy" section), U.S. concerns focused on individuals who are aligned with the Islamic State terrorist group (also known as ISIS or ISIL) and are citizens of VWP countries. Many perpetrators of recent terrorist attacks were European citizens who trained and/or fought with the Islamic State in the Syria-Iraq region.[108]

For example, several of the perpetrators of the November 2015 attacks in Paris were citizens of France[109] and the alleged mastermind was a national of Belgium.[110] Most of the perpetrators of these attacks had trained and/or fought with the Islamic State in Syria and/or Iraq.[111] The perpetrators may have been able to travel to the United States under the VWP, if ESTA did not find any derogatory information about them in U.S. biographic databases. Without having access to specific classified information, CRS is unable to say whether or not these individuals would have been eligible to travel under the VWP and/or been admitted into the U.S. at a port of entry.

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[105] GAO, *Visa Waiver Program: DHS Should Take Steps to Ensure Timeliness of Information Needed to Protect U.S. National Security*, GAO-16-498, May 2016.

[106] GAO, "Recommendations for Executive Action," in *Visa Waiver Program: DHS Should Take Steps to Ensure Timeliness of Information Needed to Protect U.S. National Security*, GAO-16-498, May 5, 2016, https://www.gao.gov/products/GAO-16-498.

[107] Testimony of Stephanie Dobitsch, Deputy Under Secretary for Intelligence Enterprise Operations in the Office of Intelligence and Analysis at DHS, in the U.S. Senate, Senate Committee on Homeland Security and Governmental Affairs, *Violent Extremism and Terrorism: Examining the Threat to Houses of Worship and Public Spaces*, 117th Cong., 2nd sess., March 16, 2022, https://www.hsgac.senate.gov/media/reps/portman-at-hearing-on-violent-extremism-and-terrorism-in-the-us-lets-tighten-things-up-and-avoid-another-colleyville-situation/.

[108] For more information, see CRS In Focus IF10561, *Terrorism in Europe*.

[109] BBC News, "Paris attacks: Who were the attackers?," April 27, 2016, https://www.bbc.com/news/world-europe-34832512.

[110] Lonnie Shekhtman, "Abdelhamid Abaaoud: Mastermind of the Paris attacks?," *Christian Science Monitor*, November 16, 2015, http://www.csmonitor.com/World/Europe/2015/1116/Abdelhamid-Abaaoud-Mastermind-of-the-Paris-attacks-video.

[111] For more information, see CRS In Focus IF10561, *Terrorism in Europe*.

In addition, it is unknown whether or not a requirement to obtain a nonimmigrant visa would have changed their eligibility to travel to the United States. As discussed, individuals who are not eligible to travel under the VWP (either individuals from non-VWP countries or those who do not receive an ESTA authorization) must get a visa before traveling to the United States. Unlike those traveling under the VWP, those who apply for a visa undergo an interview with a consular officer, and provide fingerprints and a digital photograph to be used to run checks against databases that use biometric identifiers (e.g., IDENT, the FBI's Next Generation Identification [NGI]).

In the past, U.S. authorities were concerned that terrorists could exploit refugee and migrant flows into VWP countries in Europe, especially given press reports that two of the terrorists involved in the November 2015 attacks in Paris may have entered Greece by posing as refugees with fake or stolen Syrian passports before making their way to Paris.[112] For a foreign national to travel under the VWP, he or she must possess a passport from a VWP country.[113] Thus, unless refugees or migrants who settle in VWP countries receive citizenship or nationality[114] from those countries and are issued passports, they are ineligible to travel to the United States under the VWP.[115]

Adding Countries to the VWP

Various countries have expressed a desire to be included in the VWP because of the possible economic benefits (e.g., increasing commerce and tourism), the benefits to their populace of easier and cheaper travel to the United States (i.e., since their citizens do not have to apply for and pay for a visa), and because membership in the program is often perceived as evidence of close ties with the United States.[116] In addition, supporters of the VWP argue that increasing membership in the VWP could be used as an incentive to get additional countries to share intelligence information with the United States.[117]

In the last decade, DHS has designated four new countries into the program: Poland (2019), Croatia (2021), Israel (2023), and Qatar (2024).

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[112] Alison Smale and Kimberly Bradley, "Refugees Across Europe Fear Repercussions From Paris Attacks," *New York Times*, November 18, 2015, http://www.nytimes.com/2015/11/19/world/europe/refugees-paris-attacks.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=b-lede-package-region&region=top-news&WT.nav=top-news; and "At least two Paris attackers 'traveled through Greece,'" *France 24*, November 21, 2015, https://www.france24.com/en/20151121-least-two-paris-attackers-travelled-through-greece-refugees-syria-migrants.

[113] For more information about the criteria for an individual to travel under the VWP, see **Appendix A**.

[114] A national is a citizen or subject of a particular nation and is someone who would be eligible for a passport from that nation.

[115] INA §217(a)(2) (8 U.S.C. 1187(a)(2)). The situation regarding the position of many countries in regard to acceptance of Syrian refugees is fluid and, as such, it is unclear whether any of these refugees would ever be eligible for citizenship in these countries.

[116] In 2005, the George W. Bush Administration began providing countries interested in joining the VWP with "road maps" to aid the countries in meeting the program's criteria. Some of the countries complained that since the "road maps" did not contain milestones or time tables, it was difficult to measure the amount of progress made toward fulfilling the criteria for VWP membership. There were 13 "road map" countries: Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Hungary, South Korea, Latvia, Lithuania, Malta, Poland, Romania, and Slovakia. Ten of these countries have since been admitted to the VWP. For a discussion of the current "road map," or "aspiring" VWP countries, see CRS Report R46300, *Adding Countries to the Visa Waiver Program: National Security and Tourism Considerations*.

[117] For examples of this argument, see James Jay Carafano, *With a Little Help from Our Friends: Enhancing Security by Expanding the Visa Waiver Program*, Heritage Foundation, Executive Memorandum no. 991, February 3, 2006; and Jena Baker McNeill, *Time to Decouple Visa Waiver Program from Biometric Exit*, Heritage Foundation, Web Memorandum no. 2867, April 15, 2010.

DHS designated Poland into the VWP on November 8, 2019.[118] Poland had been working with DHS for more than a decade to meet the VWP criteria.[119] In FY2019, Poland met the requirement of having a nonimmigrant visitor visa refusal rate below 3%.[120] As of November 11, 2019, Polish nationals were able to apply for ESTA.

In FY2020, Croatia's nonimmigrant visa refusal rate was 2.7%,[121] down from 4% in FY2019.[122] Croatia was designated into the VWP on September 28, 2021. Croatian nationals were be able to apply for ESTA starting December 1, 2021.

For many years, Israeli officials had been vocal about wanting to enter the VWP,[123] but the country faced challenges meeting certain criteria. For instance, Israel's Biometric Database Law prohibits sharing fingerprint data with foreign authorities. In 2017, the United States and Israel reportedly came to an agreement to share fingerprint data for those with a criminal background.[124] Another obstacle was that Israel's nonimmigrant visitor visa refusal rate had been above 3% since 2007. From FY2008-FY2021, the rate had vacillated between 3% and 8.6%. In FY2022, the rate dropped to 2.3%, giving supporters hope that Israel might qualify. Nevertheless, there was still another hurdle for Israel to overcome in order to become a VWP member. Foreign countries must treat all American visa applicants equally, and Israel has been accused of discriminating against Arab Americans.[125] In addition, American citizens who were registered with the Palestinian Authority population registry[126] could not enter Israel without advanced permission.[127] As explained in a DHS press release, in order to address this,

> Israel made updates to its entry policies to meet the VWP requirement to extend reciprocal privileges to all U.S. citizens without regard to national origin, religion, or ethnicity. DHS monitored Israel's compliance with these requirements and engaged with Palestinian-

[118] DHS, "Designation of Poland for the Visa Waiver Program," 84 *Federal Register* 60316, November 8, 2019.

[119] For more information, see CRS Report R45784, *Poland: Background and U.S. Relations*.

[120] DOS, "Adjusted Refusal Rate—B-Visas Only by Nationality Fiscal Year 2019," https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/RefusalRates/FY19.pdf; also, see full list of criteria in the "VWP Qualifying Criteria" section of this CRS report.

[121] DOS, "Adjusted Refusal Rate—B-Visas Only by Nationality Fiscal Year 2020," https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/RefusalRates/FY20.pdf; also, see full list of criteria in the "VWP Qualifying Criteria" section of this CRS report.

[122] DOS, "Adjusted Refusal Rate—B-Visas Only by Nationality Fiscal Year 2019," https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/RefusalRates/FY19.pdf; also, see full list of criteria in the "VWP Qualifying Criteria" section of this CRS report.

[123] See, for example, Amy Spiro, "Israel a candidate for visa waiver program, says top US official," *Times of Israel*, October 27, 2021, https://www.timesofisrael.com/israel-a-candidate-for-visa-waiver-program-says-top-us-official/.

[124] Stuart Winer, "Israel nearing long-sought visa waiver deal with US—ministers," *Times of Israel*, November 13, 2017, https://www.timesofisrael.com/israel-nearing-long-sought-visa-waiver-deal-with-us-ministers/.

[125] Ran Dagoni, "U.S. State Dep't: Israel Won't Get Visa Waiver So Fast," *Globes*, November 15, 2017, https://en.globes.co.il/en/article-us-state-dept-israel-wont-get-visa-waiver-so-fast-1001211881. This was also referenced on an archived version of the DOS' International Travel page about Israel, the West Bank, and Gaza: "Some U.S. citizens of Arab or Muslim heritage (including Palestinian-Americans) have experienced significant difficulties and unequal and occasionally hostile treatment at Israel's borders and checkpoints. U.S. citizens who have traveled to Muslim countries or who are of Arab, Middle Eastern, or Muslim origin may face additional questioning by immigration and border authorities"; see https://web.archive.org/web/20230420150251/https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/IsraeltheWestBankandGaza.html.

[126] For more information, see Coordination of Government Activities in the Territories, "Population Registry," https://www.gov.il/en/departments/units/population_registrar_unit.

[127] DOS, "Israel, the West Bank and Gaza," archived webpage https://web.archive.org/web/20230420150251/https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/IsraeltheWestBankandGaza.html.

> Americans both living in the West Bank and living in the United States, who now have the ability to enter Israel visa free.[128]

Thus, Israel met the final criteria and, on September 27, 2023, was designated into the VWP,[129] three days before the end of the fiscal year. Starting on October 19, 2023, Israeli citizens and nationals could apply for ESTA.[130]

Qatar was designated into the VWP on September 24, 2024.[131] The DHS press release announcing this addition stated:

> Secretary Mayorkas and Secretary Blinken commend Qatar for meeting the stringent security requirements to join the Visa Waiver Program (VWP). Qatar has been an exceptional partner for the United States, and our strategic relationship has only grown stronger over the past few years. This is further evidence of our strategic partnership and our shared commitment to security and stability. By meeting the VWP requirements, Qatar becomes the first Gulf country to enter the program and we encourage additional partners to meet all program requirements to allow for entry into the program in the interest of advancing bilateral and regional security cooperation.[132]

In FY2023, Qatar's nonimmigrant visitor visa refusal rate was 2.5%.[133] Starting no later than December 1, 2024, Qatar citizens and nationals will be able to apply for ESTA.[134]

EU and Reciprocity

Of the European Union's 27 member states, 3 are not VWP countries (Bulgaria, Cyprus, and Romania). A visa is required for citizens from non-VWP EU countries wishing to travel to the United States, whereas, under EU law, no EU country requires visas for U.S. citizens for stays of up to 90 days.[135] The EU contends that "visa reciprocity is a fundamental principle of the European Union's common visa policy" and has long urged the United States to admit all EU member states to the VWP.[136] The lack of short-term, visa-free privileges for all EU member states has been a point of contention between the United States and the EU for many years.

In January 2014, a revised EU visa reciprocity mechanism entered into force, aimed at injecting greater momentum into EU efforts to achieve full visa reciprocity with countries, such as the

[128] DHS, "Secretary Mayorkas and Secretary Blinken Announce Designation of Israel into the Visa Waiver Program," press release, September 27, 2023, https://www.dhs.gov/news/2023/09/27/secretary-mayorkas-and-secretary-blinken-announce-designation-israel-visa-waiver.

[129] Ibid.

[130] DOS, "Visa Waiver Travel for Israeli Citizens," https://travel.state.gov/content/travel/en/News/visas-news/visa-waiver-travel-for-israeli-citizens.html.

[131] DHS, "Designation of Qatar for the Visa Waiver Program," 89 Federal Register 78783, September 26, 2024, https://www.govinfo.gov/content/pkg/FR-2024-09-26/pdf/2024-22050.pdf.

[132] DHS, "Secretary Mayorkas and Secretary Blinken Announce Designation of the State of Qatar into the Visa Waiver Program," press release, September 24, 2024, https://www.dhs.gov/news/2024/09/24/secretary-mayorkas-and-secretary-blinken-announce-designation-state-qatar-visa.

[133] DOS, *Adjusted Refusal Rate – B-Visas Only by Nationality Fiscal Year 2023*, https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/RefusalRates/FY23.pdf.

[134] DHS, "Secretary Mayorkas and Secretary Blinken Announce Designation of the State of Qatar into the Visa Waiver Program," *press release*, September 24, 2024, https://www.dhs.gov/news/2024/09/24/secretary-mayorkas-and-secretary-blinken-announce-designation-state-qatar-visa.

[135] For a discussion of EU visa policy, see European Commission, *Visa Policy*, https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/visa-policy_en.

[136] European Commission, "Visa non-reciprocity: Commission takes stock of progress and developments," press release, December 18, 2018, https://ec.europa.eu/commission/presscorner/detail/en/IP_18_6821.

United States, whose citizens can travel to the EU for short-term business or tourism without a visa.[137] The EU considered suspending its visa waiver for U.S. nationals in 2017 but decided not to do so.[138] The United States remains the only country on the EU's visa-free list that does not fully reciprocate.[139]

Overstays

Some maintain that the nonimmigrant visa refusal rate is "not sufficiently probative" of a country's eligibility for the VWP because it is based on decisions made by consular officers rather than on the behavior of nonimmigrants.[140] When the program was conceived, planners expected that the number of nonimmigrants who overstay the terms of their entry under this program would be a better standard for future program participation, but it was not used at the time because of the lack of reliable data on overstays.[141] Using biographic departure information from passenger manifests, DHS has calculated overstay rates for all VWP countries (as well as other countries). Nonetheless, this method of measuring overstays has limitations because persons entering by air or sea but exiting at a land port of entry may be mischaracterized as overstays.[142] Nevertheless, DHS has made some changes in estimating overstay rates,[143] which may make it a more useful measure now than when the VWP began.

In January 2016, DHS released its first report on overstay rates.[144] In the most recent pre-pandemic overstay report, VWP countries had an average overstay rate of 0.4% in FY2019. In contrast, the average overstay rate for non-VWP countries in FY2019 was 2.1%.[145] The latest overstay report reflects data from FY2022. VWP countries had estimated average overstay rate of 1.3%, whereas non-VWP countries had an average rate of 7.2%.[146]

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[137] In 2018, the European Union (EU) announced that before travel, visitors from all visa-free countries would need to complete an online application similar to ESTA, and be required to pay a fee of €7 to use the European Travel Information and Authorization System (ETIAS). ETIAS would apply to people traveling to Europe's Schengen Zone, an area comprising 29 countries, the majority of which are EU member states, including France, Germany, and Spain. The United Kingdom will not be part of this new European visa system. ETIAS is expected to be operational in 2025. An approved ETIAS will be valid for three years or the date of passport expiration (whichever happens first), and it can be used for stays of up to 90 days. For more information, see EU, "New requirement to travel to Europe," https://travel-europe.europa.eu/etias/what-etias_en.

[138] European Commission, "Visa Reciprocity: Commission responds to Parliament," press release, May 1, 2017, https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1148.

[139] For more background, see CRS Report RS22030, *U.S.-EU Cooperation Against Terrorism*.

[140] U.S. Congress, House Committee on the Judiciary, *Visa Waiver Permanent Program Act*, report together with additional views to accompany H.R. 3767, 106th Cong., 2nd sess., H.Rept. 106-564 (Washington, DC: GPO, 2000), p. 32.

[141] For more information about historical and recent overstay estimates, see CRS Report R47848, *Nonimmigrant Overstays: Overview and Policy Issues*.

[142] For example, a 2019 GAO report says there are "existing limitations in collecting departure data in the land environment." See GAO, *Department of Homeland Security: Review of the Fiscal Year 2017 Entry/Exit Overstay Report*, GAO-19-298R, February 22, 2019, p. 3, https://www.gao.gov/products/GAO-19-298R.

[143] For more information, see CRS Report R47848, *Nonimmigrant Overstays: Overview and Policy Issues*.

[144] See DHS, *Entry/Exit Overstay Report, Fiscal Year 2015*, January 19, 2016, https://www.dhs.gov/sites/default/files/publications/FY%2015%20DHS%20Entry%20and%20Exit%20Overstay%20Report.pdf. An annual report on overstays was originally mandated by Congress in 1998 (P.L. 105-173, codified at 8 U.S.C. §1376), and Congress required the report again in P.L. 114-113.

[145] DHS, *Fiscal Year 2019 Entry/Exit Overstay Report*, https://www.dhs.gov/sites/default/files/publications/20_0513_fy19-entry-and-exit-overstay-report.pdf.

[146] DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, https://www.dhs.gov/sites/default/files/2023-07/23_0707_FY22_FY23_CBP_Integrated_Entry_Exit_Overstay_Report.pdf.

Although the visa refusal rate was seen as an alternative to the overstay rate when the program was conceived, people are denied visas for reasons other than being unable to prove that they will not overstay their visas and remain illegally in the United States. During the visa application process, consular officers must confirm that an alien is not ineligible for a visa under any of the *grounds of inadmissibility* of the INA, such as having a criminal history, engaging in terrorist activity, or having previously violated U.S. immigration law.[147] Although most B visa denials are because the alien cannot prove that he or she is not an intending immigrant,[148] there are other reasons a person could be denied a visa that are captured as part of a country's visa refusal rate.

Selected Recent Legislative Activity

In recent Congresses, legislative proposals related to the VWP have sought to expand the number of countries by changing the criteria[149] or giving DHS greater flexibility to designate countries into the VWP that do not meet the existing criteria.[150] Some bills proposed directly designating specific countries[151] or require reports assessing a specific country's eligibility for the program.[152] Some proposals have addressed the spending of funds generated from ESTA fees.[153]

Some proposals relate to VWP security. For example, in response to the 2022 Texas synagogue attack (see the "Information Sharing" section), bills were proposed to add provisions enhancing information-sharing agreements between the United States and countries participating in the VWP.[154] Unrelated to this attack, other bills have called for increased information sharing for

[147] The *grounds of inadmissibility* under INA §212(a) include health-related grounds; criminal history; security and terrorist concerns; public charge (e.g., indigence); seeking to work without proper labor certification; illegal entrants and immigration law violations; ineligibility for citizenship; and aliens who are illegally present or have previously been removed. Determinations of inadmissibility are also made by CBP officers at ports of entry.

[148] INA Section 214(b) generally presumes that all aliens seeking admission to the United States are coming to live permanently; as a result, aliens seeking to qualify for a B visa (and most other nonimmigrant visas) must demonstrate that they are not coming to reside permanently in the United States. CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

[149] For example, the Allied Nations Travel Modernization Act (H.R. 2946) in the 116th Congress would have allowed countries to be designated into the VWP if, instead of a low nonimmigrant visitor visa refusal rate, they have a low visa overstay rate and agree to spend 2% of their gross domestic product on defense. According to former Representative Dan Lipinski, who introduced the legislation, the bill was drafted "to create an alternative pathway into the program for North Atlantic Treaty Organization (NATO) nations like Poland." As noted above, Poland was designated into the VWP on November 6, 2019. Congressman Dan Lipinski, "Lipinski Praises Step Forward Towards Admitting Poland to the Visa Waiver Program as Polish President Visits U.S.," press release, June 13, 2019, https://web.archive.org/web/20200301085114/https://lipinski.house.gov/press-releases/lipinski-praises-step-forward-towards-admitting-poland-to-the-visa-waiver-program-as-polish-president-visits-us/.

[150] For example, in the 116th Congress, Jobs Originated through Launching Travel (JOLT) Act (H.R. 2187), sought to reinstate DHS's authority to grant a waiver for the nonimmigrant visitor visa refusal rate.

[151] For example, in the 118th Congress, S. 814 seeks to designate Romania into the VWP. In the 114th Congress, multiple bills sought to designate Poland into the VWP (e.g., S. 2534, S. 1619, S. 2131). In the 113th Congress, some bills sought to designate Hong Kong into the program (e.g., S. 703, H.R. 1923) and others sought to designate Israel, prior to Israel being designated into the VWP in 2023 (e.g., S. 266, H.R. 300, S.Amdt. 3933).

[152] For example, S. 1926 and H.R. 6875 in the 118th Congress seek to assess whether Uruguay meets the program's eligibility requirements.

[153] For example, the Responsibly Enhancing America's Landscapes Act (S. 2783) from the 116th Congress would have established the National Park Service Legacy Restoration Fund to help with the backlog of maintenance projects in national parks. This fund would have been paid for by a $16 ESTA fee along with a $25 nonimmigrant visitor visa fee and a $5 park entrance fee.

[154] For example, see S. 493 from the 118th Congress and S. 4220 from the 117th Congress. For more context on the motivation for the introduction of this bill, see Marco Rubio, U.S. Senator for Florida, "Rubio, Cruz Introduce the (continued...)

certain VWP member countries.[155] For countries that that have "golden visas"[156] (which allow individuals to acquire citizenship based on a monetary donation or investment in the country), a number of recent proposals would either disallow those countries from participating in the VWP or would add additional requirements for their participation.[157] Some bills have sought to rename the VWP as "the Secure Travel Partnership" to reflect one of the program's main goals of securing travel to the United States.[158] Previous legislation has also sought to deter VWP overstays.[159]

In terms of recent legislation that has become law, the Further Consolidated Appropriations Act, 2020 (P.L. 116-94) authorized the continued use of the ESTA fee to partially fund Brand USA[160] through September 30, 2027. It also raised the ESTA fee from $14 to $21. The fee increase went into effect on May 20, 2022.[161] The Consolidated Appropriations Act, 2022 (P.L. 117-103) extended the authorized use of ESTA fees to partially fund Brand USA until October 21, 2028.

Security the Visa Waiver Program Act, press release, May 16, 2022, https://www.rubio.senate.gov/rubio-cruz-introduce-the-securing-the-visa-waiver-program-act/.

[155] See H.R. 4367.

[156] For more information on golden visas, see CRS In Focus IF11344, *The Changing Landscape of Immigrant Investment Programs*.

[157] For example, S.Amdt. 400 in the 118th Congress and S.Amdt. 5539 and H.R. 6911 in the 117th Congress.

[158] For example, H.R. 2187 and H.R. 1996 in the 116th Congress.

[159] For example, the Humanitarian Upgrades to Manage and Assist our Nation's Enforcement (HUMANE) Act of 2019 (S. 1303) in the 116th Congress sought to reduce VWP overstays by amending the INA's terms and conditions of admission for VWP travelers, the VWP waiver of rights, and the detention and repatriation of visa waiver violators.

[160] Brand USA (formally known as the Corporation for Travel Promotion) is a nonprofit public-private entity that is also charged with communicating U.S. visa and entry policies to overseas visitors. Brand USA was established under the Travel Promotion Act of 2009 (P.L. 111-145) and began operations in May 2011. The private sector funds half of Brand USA's spending through a combination of cash and in-kind contributions, such as advertising. The federal government matches the cash and in-kind contributions with an annual grant of no more than $100 million. Brand USA currently receives $17 of the $21 paid to ESTA. The remaining $4 goes to CBP to cover the costs of administering ESTA.

[161] DHS, CBP, "Electronic System for Travel Authorization (ESTA) Fee Increase," 87 *Federal Register* 30769, May 20, 2022, https://www.govinfo.gov/content/pkg/FR-2022-05-20/pdf/2022-10869.pdf.

Appendix A. Criteria to Travel Under the VWP

For a noncitizen to travel to the United States under the VWP, they must meet the following criteria:

(1) be seeking entry as a visitor for business or pleasure for ninety days or less;

(2) be a citizen or national of a VWP country;

(3) present a valid unexpired electronic and machine-readable passport that meets program requirements and is issued by a designated VWP country to the air or vessel carrier before departure;

(4) execute the required immigration forms;

(5) if arriving at a port of entry into the U.S. by air or sea, arrive on an authorized carrier;

(6) not represent a threat to the welfare, health, safety or security of the United States;

(7) not have failed to comply with the conditions of any previous admission as a nonimmigrant visitor;

(8) possess a round-trip transportation ticket;

(9) obtain an approved travel authorization via Electronic System for Travel Authorization (ESTA);

(10) waive the right to review or appeal a decision regarding admissibility at the port of entry or to contest, other than on the basis of an application for asylum, any action for removal; and

(11) meet other program requirements.[162]

[162] DHS, "Hungary Electronic System for Travel Authorization Validity Period," 88 *Federal Register* 50759, August 2, 2023, https://www.govinfo.gov/content/pkg/FR-2023-08-02/pdf/2023-16412.pdf ; 8 U.S.C. §1187(a)–(b); 8 C.F.R. §217.

Appendix B. Legislative History and Selected Administrative Action

This appendix provides an overview of the major legislative history[163] and selected Administration action related to the Visa Waiver Program.

Visa Waiver Pilot Program

The Visa Waiver Program was established initially as a temporary program (Visa Waiver Pilot Program) by the Immigration Reform and Control Act of 1986 (P.L. 99-603). To become a program country under the pilot program, a country must have offered reciprocal privileges to U.S. citizens and have had an average nonimmigrant visa refusal rate of 2% or less for the previous two years with neither year's refusal rate exceeding 2.5%. Participation in the pilot program was originally limited to up to eight countries.[164] Since the establishment of the pilot program, Congress has periodically passed legislation to extend the program's authorization, expand the number of countries allowed to participate in the program, and modify the qualifying criteria. Between 1986 and 1997, Congress passed five bills that were subsequently signed into law that made changes to the Visa Waiver Pilot Program:

- the Immigration Technical Corrections Act of 1988 (P.L. 100-525);
- the Immigration Act of 1990 (P.L. 101-649), which inserted further qualifying criteria and reporting requirements for the program and removed the limit on the number of countries that could participate in the program;
- the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (P.L. 102-232);
- the Immigration and Nationality Technical Corrections Act of 1994 (P.L. 103-416), which created a probationary status to allow countries whose nonimmigrant visa refusal rates were higher than 2% but less than 3.5% to enter the program on a probationary basis if other qualifying criteria are met; and
- the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), which created a new type of probationary status for countries in the program that failed to meet certain criteria, and removed the probationary status that had allowed countries with nonimmigrant visa refusal rates higher than 2% but less than 3.5% to enter the program.

The pilot visa waiver program was scheduled to expire on September 30, 1997, but short-term extensions were included in the Continuing Resolutions passed in the 105th Congress.[165] The Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1998 (P.L. 105-119) contained an extension of the program through April 30, 1998. In 1998, Congress passed legislation (P.L. 105-173) that not only extended the program through April 30,

[163] Laws that created and made changes to sunset date of the Travel Promotion Act of 2009, such as P.L. 111-145, P.L. 111-198, P.L. 113-235, and P.L. 115-123 are included in the discussion of the "Consolidated Appropriations Act, 2022.".

[164] 8 U.S.C. §1187, amendments.

[165] An extension of the pilot program was included in the first Continuing Resolution (P.L. 105-56 §117) for FY1998. The five subsequent Continuing Resolutions—P.L. 105-64, P.L. 105-68, P.L. 105-69, P.L. 105-71, and P.L. 105-84—simply extended the expiration date of the provisions in the first Continuing Resolution for FY1998 (P.L. 105-56).

2000, but made other changes to the standard by which countries are selected (designated) to participate in the VWP.[166] By 1999, program participation had grown to include 29 countries.[167]

Visa Waiver Permanent Program Act

On October 30, 2000, the Visa Waiver Permanent Program Act was signed into law (P.L. 106-396). The statutory authority for the Visa Waiver Pilot Program had expired on April 30, 2000, but in the interim, the Commissioner of the former Immigration and Naturalization Service (INS)[168] exercised the Attorney General's parole authority to extend the program temporarily.[169] Besides making this program's authorization permanent, the Visa Waiver Permanent Program Act included provisions designed to strengthen documentary and reporting requirements. P.L. 106-396 included provisions that

- mandated that by October 1, 2007, all entrants under the VWP must have machine-readable passports;
- required that all VWP applicants be checked against lookout systems;
- required ongoing evaluations of participating countries (not less than once every five years);
- required the collection of VWP arrival/departure data at air and sea ports of entry; and
- required that the calculation of visa refusal rates for determining country eligibility shall not include any refusals based on race, sex, or disability.[170]

At the time, many maintained that P.L. 106-396 balanced the competing concerns of facilitating travel and tightening immigration controls.

USA PATRIOT Act of 2001

The USA PATRIOT Act (P.L. 107-56), signed into law on October 26, 2001, shortened the time frame for all entrants under the VWP to have machine-readable passports to October 1, 2003, but allowed the Secretary of State to waive this requirement until October 1, 2007, if the VWP country could show that it was making progress toward issuing machine-readable passports. In addition, the USA PATRIOT Act directed the Secretary of State to ascertain, each year until 2007, that VWP countries had established programs to develop tamper-resistant passports.

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[166] Originally, to qualify for the Visa Waiver Pilot Program countries needed to have had an average nonimmigrant visa refusal rate of no more than 2% over the past two fiscal years with neither year going above 2.5%. P.L. 105-173 added the criteria that a country could have a nonimmigrant visa refusal rate of less than 3% for the previous year and qualify for the program.

[167] The 29 countries were Andorra, Argentina, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, and Uruguay. Argentina was removed from the VWP in February 2002, and Uruguay was removed in April 2003. From April 2003 until November 2008, the VWP included 27 countries. As of October 2021, there are 40 countries participating in the VWP.

[168] The Homeland Security Act of 2002 (P.L. 107-296) abolished the Immigration and Naturalization Service (INS) and effective March 1, 2003, transferred most of its functions to three bureaus in the new U.S. Department of Homeland Security: USCIS, Immigration and Customs Enforcement (ICE), and CBP).

[169] Parole is a temporary authorization to enter the United States and is normally granted when the alien's entry is determined to be in the public interest (INA §212(d)(5)(A)).

[170] Many of these requirements were included to address shortcomings in the program, as identified by the Inspectors General of both the Departments of Justice and State.

On September 24, 2003, the Secretary of State extended the deadline for visitors from 21 VWP countries to present a machine-readable passport at the ports of entry until October 26, 2004.[171]

Enhanced Border Security and Visa Entry Reform Act of 2002

The Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act; P.L. 107-173),[172] signed into law on May 14, 2002, required all VWP countries to certify that they report in a timely manner the theft of blank passports, and required, prior to admission to the United States, that all aliens, including those who enter under the VWP, are checked against a lookout system. The act also mandated that by October 26, 2004, the government of each VWP country needed to certify that it has established a program to issue to its nationals machine-readable passports that are tamper-resistant and incorporate a biometric identifier.[173] The act specified that any person applying for admission to the United States under the VWP must have a tamper-resistant, machine-readable passport with a biometric identifier unless the passport was issued prior to October 26, 2004. The USA PATRIOT Act established the deadline for all foreign nationals entering under the VWP to have machine-readable, tamper-resistant passports, and the new requirement of biometrics in the passports did not change the deadline in the USA PATRIOT Act for the presentation of machine-readable, tamper-resistant passports. The biometric passport requirement deadline was extended to October 26, 2005, by P.L. 108-299.[174] Thus, as of October 27, 2005 (the day after the new deadline), all entrants under the VWP were required to present machine-readable, tamper-resistant passports (as required by the USA PATRIOT Act, and P.L. 108-299), but only passports issued after October 26, 2005, were required to have a biometric identifier.

Although Congress extended the deadline for VWP countries to certify that they had a program to issue machine-readable passports with biometric identifiers, most VWP countries would have been unable to meet the new, October 26, 2005, deadline, especially if the biometric requirement could only have been fulfilled by countries who had electronic data chips in their passports (e-passports). In addition, there was resistance in Congress to grant another extension of the biometric deadline.[175] As a result, the U.S. government clarified that a digitized photograph printed on a data page in the passport would count as a biometric for the October 26, 2005, requirement. Only France and Italy were unable to meet the new deadline, but have since come into compliance. In addition, any passports used by VWP travelers issued after October 26, 2006, requires integrated chips with information from the data page (e-passports).

[171] The 21 countries granted a postponement were: Australia, Austria, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. On November 11, 2003, Luxembourg was granted an extension of the deadline. Five VWP countries (Andorra, Brunei, Liechtenstein, Luxembourg, and Slovenia) were eligible to receive and extension but did not request one because "all of their citizens already have machine-readable passports." Belgium was not eligible to receive an extension, as DOJ had already required their citizens to present machine-readable passports as of May 15, 2003 (see footnote 45). DOS, "Machine-Readable Passports for Visa Waiver Program Travel Postponed," press release, September 23, 2003, https://2001-2009.state.gov/r/pa/prs/ps/2003/24407.htm.

[172] The original bill, H.R. 3525, was sponsored by Representative F. James Sensenbrenner.

[173] The act tasked the International Civil Aviation Organization (ICAO) with developing the biometric standard.

[174] Signed into law on August 9, 2004.

[175] For example, see letter from Rep. F. James Sensenbrenner, Jr., to Luc Frieden, President of the European Counsel of Ministers, and Franco Frattini, Vice-President of the European Commission, April 7, 2005.

The Intelligence Reform and Terrorism Prevention Act of 2004

P.L. 108-458,[176] the Intelligence Reform and Terrorism Prevention Act of 2004, added the requirement that by October 26, 2006, as a condition of being in the VWP, each VWP country must certify that it is developing a program to issue tamper-resistant, machine-readable visa documents that incorporate biometric identifiers which are verifiable at the country's port of entry.

Implementing the 9/11 Commission Recommendations Act of 2007

Signed into law on August 3, 2007, Section 711 of P.L. 110-53 (H.R. 1) required the Secretary of Homeland Security, no later than one year after enactment, to establish an exit system that records the departure of every alien who entered under the VWP and left the United States by air. The exit system is required to match the alien's biometric information against relevant watch lists and immigration information, and compare such biographical information against manifest information collected by airlines to confirm that the alien left the United States.[177]

P.L. 110-53 also allows the Secretary of Homeland Security, in consultation with the Secretary of State, to waive the nonimmigrant visa refusal rate requirement for admission to the VWP on the date on which the Secretary of Homeland Security certifies to Congress that an air exit system is in place that can verify the departure of not less than 97% of foreign nationals who exit through U.S. airports. In addition, the Secretary of Homeland Security also had to certify to Congress that the electronic travel authorization system (discussed below) was operational, prior to being able to waive the nonimmigrant visa refusal rate requirement.

When P.L. 110-53 took effect, the Secretary of Homeland Security could waive the nonimmigrant refusal rate even if the air exit system did not yet incorporate biometric identifiers. However, if after June 30, 2009, the air exit system was unable to match an alien's biometric information with relevant watch lists and manifest information, the Secretary of Homeland Security's authority to waive the nonimmigrant visa refusal rate would be suspended until the air exit system had the specified biometric capacity.

For admission to the VWP, a country that receives a refusal rate waiver also has to

- meet all the security requirements of the program;
- be determined by the Secretary of Homeland Security to have a totality of security risk mitigation measures that provide assurances that the country's participation in the program would not compromise U.S. law enforcement and security interests, or the enforcement of U.S. immigration laws;
- have had a sustained reduction in visa refusal rates and have existing conditions for the rates to continue to decline;
- have cooperated with the United States on counterterrorism initiatives and information sharing before the date of its designation and be expected to continue such cooperation; and

[176] The original bill, H.R. 2845, was sponsored by Senator Susan M. Collins and signed into law on December 17, 2004.

[177] This exit system is not necessarily the same as the exit system required for the nonimmigrant visa refusal rate waiver authority. DHS appears to have incorporated this requirement as part of the exit portion of automated entry and exit data system known as US-VISIT.

- have, during the previous fiscal year, a nonimmigrant visa refusal rate of not more than 10%, or an overstay rate that did not exceed the maximum overstay rate established by the Secretaries of Homeland Security and State for countries receiving waivers of the nonimmigrant visa refusal rate to participate in the VWP the program.

P.L. 110-53 also specified that in determining whether to waive the nonimmigrant visa refusal rate requirement, the Secretary of Homeland Security, in consultation with the Secretary of State, may take into consideration other factors affecting U.S. security, such as the country's airport security and passport standards, whether the country has an effective air marshal program, and the estimated overstay rate for nationals from the country.

In addition, P.L. 110-53 made several changes to the criteria to qualify as a VWP country, which were intended to enhance the security of the program. As previously mentioned, the act mandated that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement an electronic travel authorization system,[178] through which each alien electronically provides, in advance of travel, the biographical information necessary to determine whether the alien is eligible to travel to the United States and enter under the VWP. Aliens using the system are charged a fee that is required to be set at a level so that the cost of creating and administering the system is covered by those fees.

Furthermore, under P.L. 110-53, to participate in the VWP, countries are required to enter into an agreement with the United States to report or make available through INTERPOL information about the theft or loss of passports. The agreements must specify strict time limits for the reporting of this information. In addition, to be part of the VWP, countries have to accept the repatriation of any citizen, former citizen, or national against whom a final order of removal is issued no later than three weeks after the order is issued. Also, the countries are required to enter into an agreement with the United States to share information regarding whether a national of that country traveling to the United States represents a threat to U.S. security or welfare. The act requires the Secretary of Homeland Security to provide technical assistance to VWP countries to assist the countries in fulfilling the requirements of the program.

In addition, P.L. 110-53 requires the Director of National Intelligence to conduct intelligence assessments of countries. For new VWP countries, the reviews must occur prior to their designation into the VWP. For existing VWP countries, the reviews should be done in conjunction with the biannual country reviews.

The act also requires the Director of National Intelligence to immediately inform the Secretary of Homeland Security of any current and credible threat of imminent danger to the United States or its citizens that originates from a VWP country. Upon receiving such notification, the Secretary of Homeland Security, in consultation with the Secretary of State, may suspend a country from the VWP without any prior notice. Once the country's participation in the VWP no longer poses a security threat, the Secretary of Homeland Security shall reinstate the country in the VWP.

Obama Administration Initiated VWP Security Enhancements

In August and November 2015, the Obama Administration announced a series of changes to the VWP to enhance security. Some of the Administration's changes were codified by the Visa Waiver Program Improvement and Terrorist Travel Prevention Act (P.L. 114-113). (See the section that follows for a full discussion of the legislation.)

[178] The system as implemented is known as the Electronic System for Travel Authorization (ESTA).

In August 2015, the then-Secretary of Homeland Security Jeh C. Johnson announced an intention to implement new security measures in the VWP.[179] Most significant among them were

- requiring e-passports of all VWP travelers coming to the United States,
- requiring VWP countries to use the INTERPOL Stolen and Lost Travel Document (SLTD) database to screen travelers crossing a VWP country's borders, and
- negotiating for the expanded use of U.S. air marshals on flights from VWP countries to the United States.

In November 2015, the Obama Administration announced more changes to the VWP meant to enhance national security. These changes included

- modifying ESTA to capture information regarding any past travel to countries constituting a terrorist safe haven;
- accelerating the review process for VWP countries;
- requiring, within 60 days, that DHS report to the President on possible pilot programs designed to assess the collection and use of biometrics (fingerprints, photographs, or both) and on any countries that are deficient in key areas of cooperation, along with recommended options to engender compliance;
- requiring, within 60 days, that the Federal Bureau of Investigation (FBI) provide an evaluation to the President on the terrorism information sharing that occurs between the United States and VWP countries and identify options to mitigate any deficiencies;
- offering assistance to countries to better facilitate terrorism information sharing, specifically to include the use of biometrics and deploying "Foreign Fighter Surge Teams" to work with countries to counter terrorist travel; and
- expanding and promoting the use of the Global Entry program (a trusted traveler program),[180] which includes biometric checks within VWP countries.

The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015

The Visa Waiver Program Improvement and Terrorist Travel Prevention Act (H.R. 158) was passed by the House on December 8, 2015, and enacted as part of the Consolidated Appropriations Act of 2016 (P.L. 114-113) on December 18, 2015.

P.L. 114-113 requires, as of April 1, 2016, that all foreign nationals traveling under the VWP present an electronic passport (e-passport) that is fraud resistant and incorporates biographic and biometric information (as determined by the Secretary of Homeland Security). No later than October 1, 2016, each VWP country had to certify that it had in place mechanisms to validate

[179] DHS, "Statement by Secretary Jeh C. Johnson on Intention to Implement Security Enhancements to the Visa Waiver Program," press release, August 6, 2015, https://www.dhs.gov/news/2015/08/06/statement-secretary-jeh-c-johnson-intention-implement-security-enhancements-visa.

[180] As of February 12, 2024, the Global Entry program is available to citizens of Argentina, Australia, Bahrain, Brazil, Canada, Colombia, Croatia, the Dominican Republic, Germany, India, Japan, Mexico, the Netherlands, New Zealand, Panama, the Republic of Korea (South Korea), Singapore, Switzerland, Taiwan, the United Kingdom, and Qatar (see CBP, *Global Entry: International Arrangements*, https://www.cbp.gov/travel/trusted-traveler-programs/global-entry/international-arrangements). For a discussion of the Global Entry program, see CRS Report R46783, *Trusted Traveler Programs*.

machine-readable passports and e-passports at each port of entry. This requirement does not apply to travel between countries within the Schengen Area.[181]

The act also prohibited people who were present in certain countries on or after March 1, 2011, from traveling under the VWP. The specified countries include

- Iraq and Syria;
- any country designated by the Secretary of State as having repeatedly provided support for acts of international terrorism under any provision of law,[182] or
- any other country or area of concern[183] deemed appropriate by the Secretary of Homeland Security.

In addition, anyone who is a dual national of a VWP country and one of these specified countries is ineligible to travel under the VWP. Importantly, the VWP only applies to foreign nationals coming to the United States; it does not impact U.S. citizens, even those with dual nationality. In other words, dual U.S.-Iranian, U.S.-Iraqi, U.S.-Sudanese, or U.S.-Syrian citizens still do not need a visa to travel to the United States. If the Secretary of Homeland Security determines that the foreign national was in one of the specified countries in order to perform military service in the armed forces of a VWP country or to perform official duties as an employee of the VWP country, the prohibition on traveling under the VWP does not apply. Similarly, P.L. 114-113 gives the Secretary of Homeland Security the authority to waive the prohibition on travel under the VWP if the Secretary determines that the waiver would be in the law enforcement or national security interests of the United States. The Secretary of Homeland Security is required to submit an annual report to Congress on each instance where the waiver authority was exercised.

Likewise, P.L. 114-113 amended the lost or stolen passports reporting requirement to require countries to report lost or stolen passports to the United States or make the information available through INTERPOL no later than 24 hours after a theft or loss is reported to the VWP country. The act also required, no later than September 13, 2016,[184] that each program country with an international airport certify, to the maximum extend allowed under the laws of the country, that it is screening each foreign national who is admitted to or departs from that country, using relevant INTERPOL databases and notices or other means designated by the Secretary of Homeland Security. Consequently, a country that fails to screen foreign nationals arriving in or departing from that country will be terminated from the VWP. This screening requirement does not apply to those traveling between countries within the Schengen Area.

P.L. 114-113 also specifies that the HSPD-6 arrangements and PCSC Agreements (discussed in "Information Sharing") not only have to be signed before a country can be designated as a VWP country but have to be fully implemented. If the Secretary of Homeland Security and the Secretary of State jointly determine that the VWP country is not sharing information regarding

[181] The Schengen Area enables citizens of the European Union (EU), as well as many non-EU nationals, to cross select international borders in Europe without being subject to border checks. See European Commission, *Migration and Home Affairs: Schengen Area*, https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area_en.

[182] Examples of acts that use the term "repeatedly provided support for acts of international terrorism," include §6(j) of the Export Administration Act of 1979 (50 U.S.C. §2405), §40 of the Arms Export Control Act (22 U.S.C. §2780), and §620A of the Foreign Assistance Act of 1961 (22 U.S.C. §2371).

[183] The Secretary of Homeland Security, in consultation with the Director of National Intelligence, is required to make this determination within 60 days of enactment. The criteria to make the determination would include whether the presence of a foreign national in that area or country increases the likelihood that the foreign national is a credible threat to U.S. national security, whether a foreign terrorist organization has a significant presence in the area or country, and whether the country or area is a safe haven for terrorists.

[184] This is 270 days after the enactment of P.L. 114-113.

whether a citizen of that country traveling to the United States represents a threat to the security or welfare of the United States or U.S. citizens, the country will be terminated from the program. The country will be redesignated as a program country as soon as it fulfills the information-sharing requirements.

The act also requires that DHS report biennially to Congress on the national security threat posed by each program country.[185] The Secretary of Homeland Security, in consultation with the Director of National Intelligence and the Secretary of State, is also required to annually evaluate program countries based on specified criteria[186] and to identify any country for which nationals of that country present a "high risk" to U.S. national security.[187] The Secretary of Homeland Security, in consultation with the Secretary of State, can suspend a program country based on a determination that the country presents a high risk to U.S. national security.

P.L. 114-113 allows the Secretary of Homeland Security to shorten the validity period of any ESTA determination, in addition to revoking the determination. The Secretary of Homeland Security is also required to collect information, through ESTA, on an applicant's previous or multiple citizenships and to research opportunities to incorporate into ESTA technology to detect and prevent fraud or deception.

The act also requires DHS to report annually on the number of individuals (identified by citizenship) who were denied eligibility to travel under ESTA or whose eligibility to travel was revoked because they were determined to represent a security threat to the United States.[188] Additionally, DHS was required to report within 30 days from December 18, 2015, on ways to strengthen the ability of ESTA to prevent terrorists and instruments of terrorism from entering the United States.

The act requires DHS, in consultation with the Department of State, to provide assistance, in a risk-based manner, to non-VWP countries to assist the countries in submitting information on lost or stolen travel documents to INTERPOL and issuing and validating e-passports at ports of entry. The act also contained Sense of Congress language that the International Civil Aviation Organization (ICAO)[189] is expected to establish standards for e-passports and obligate the 193 member countries to utilize e-passports as soon as possible.

Further Consolidated Appropriations Act of 2020

The Further Consolidated Appropriations Act of 2020 (P.L. 116-94) extended the authority for Brand USA, a public-private travel promotion entity, to receive fees from the VWP through the end of September 2027 and raises the ESTA fee, as described above in "Electronic System for Travel Authorization (ESTA)." The private sector still must provide at least $100 million per year

[185] The first of such reports would be due 90 days after the bill is enacted.

[186] The criteria include the number of nationals determined to be ineligible to travel to the United States under the VWP during the previous year; the number of nationals who were identified in U.S. government terrorism databases during the previous year, the estimated number of nationals who traveled to Iraq or Syria since March 1, 2011, to engage in terrorism; the country's capacity to combat passport fraud; the level of cooperation with U.S. counter-terrorism efforts; the adequacy of the country's border and immigration controls; and any other criteria determined by the Secretary of Homeland Security.

[187] The first report would be due 60 days after enactment.

[188] The first report would be due 30 days after enactment.

[189] The International Civil Aviation Organization (ICAO) is a United Nations specialized agency established to manage the administration and governance of the Convention on International Civil Aviation. The ICAO works with Convention Member States and industry groups to reach consensus on international civil aviation standards and practices. International Civil Aviation Organization, *About ICAO*, https://www.icao.int/about-icao/Pages/default.aspx.

in in-kind contributions and cash to the Brand USA program in order for it to receive these federal funds. The new ESTA fee went into effect on May 20, 2022.[190]

Consolidated Appropriations Act, 2022

The Consolidated Appropriations Act, 2022 (P.L. 117-103) extended the authority of Brand USA to receive ESTA fees through October 31, 2028.[191]

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[190] DHS, CBP, "Electronic System for Travel Authorization (ESTA) Fee Increase," 87 *Federal Register* 30769, May 20, 2022, https://www.govinfo.gov/content/pkg/FR-2022-05-20/pdf/2022-10869.pdf. Originally the fee was $14: $4 to cover the costs of administering ESTA and $10 for the travel promotion fee established by Congress in the Travel Promotion Act of 2009 (§9 of P.L. 111-145) (DHS, Customs and Border Protection, "DHS, CBP Announce Interim Final Rule For ESTA Fee," press release, August 6, 2010).

[191] The fee was instituted on September 8, 2010, to sunset on September 30, 2014. The sunset date had previously been extended multiple times, by P.L. 111-198, Title VI of P.L. 113-235, and Title II of P.L. 115-123, and Division I, Title VIII of P.L. 116-94.