

# WebMemo



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## Visa Waiver Program Hearing Should Consider DHS Progress toward Increased Security

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The Government Accountability Office (GAO) has released a report criticizing the Department of Homeland Security's (DHS) implementation of the new congressional security measures aimed at the Visa Waiver Program (VWP). DHS counters this report by emphasizing that in a very short period of time, it has made considerable progress toward meeting the looming January deadline.

The Senate Judiciary Committee, Subcommittee on Terrorism, Technology, and Homeland Security, has scheduled a hearing to discuss the report's conclusions. While the GAO Report does take a critical look at VWP, Congress should not use this hearing to be overly critical of the significant progress DHS has made.

**A Positive Step for Security and Diplomacy.** The VWP allows citizens from pre-approved countries to travel to the U.S. for up to 90 days without a visa. Currently 13 million citizens from 27 countries have used this process. Congress has attempted to streamline the VWP, including implementation of the Electronic System for Travel Authorization (ESTA). ESTA, upon implementation, will require those individuals who wish to travel to America from member countries to undergo electronic approval prior to entering the U.S.

When VWP began in 1986, it applied only to countries whose low nonimmigrant visa refusal rates were under 3 percent. But DHS recognized the need to expand this percentage to include more of our allies. Subsequently, Congress, in the 9/11 Implementation Bill, agreed to admit otherwise

qualifying countries whose rates were 3–10 percent so long as certain requirements were met: (1) The Department must certify that there is a system to verify the departure of not less than 97 percent of foreign nationals who depart through U.S. airports; and (2) ESTA had to be fully operational.

**Trigger-Happy GAO.** The September GAO report, however, criticized DHS for its failure to “assess and mitigate program risks.” In essence, GAO was unhappy with what it perceived to be likely methodologies for meeting the act's requirements as well as its belief that DHS was not doing enough to meet the implementation deadline. For example, GAO berated several of the potential methodologies that might be used by DHS to meet the 97 percent certification requirement, including the use of departure records to verify that an individual has left the country. Undoubtedly GAO's job is to analyze the implementation of this program, but considering that DHS has not chosen any methodology as its final product, this report seems to settle more on speculation than substance. Furthermore, the rapid pace of implementation means that a considerable amount of work has occurred since the time GAO interviewed DHS and the report's release.

This paper, in its entirety, can be found at:  
[www.heritage.org/Research/HomelandSecurity/wm2076.cfm](http://www.heritage.org/Research/HomelandSecurity/wm2076.cfm)

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VWP is a fabulous way to accomplish several important goals: building a community of free nationals; fueling economic, cultural, and social ties; and increasing American public diplomacy. Coupled with ESTA, VWP is a boon for enhancing U.S. security, since we know more about those entering the United States, and it is a positive for travelers because there is less hassle upon arrival. Even GAO admits that DHS has achieved what Congress requested: more security aimed at those individuals entering America.

**Do Not Jump the Gun.** Several members of Congress are eager to pounce on any inadequacies in the VWP, and this new GAO report may seem like just the ticket. But DHS is the entity charged with implementation of this program, not GAO. Congress should hold off judgment until DHS has an opportunity to provide up-to-date information. Members of Congress at today's hearing should:

- *Recognize that DHS has delivered the security measures requested by Congress.* This can be accomplished by doing absolutely nothing. Although the GAO report attempts to paint a haunting picture of VWP implementation, the reality is that DHS has made considerable progress toward increased security. GAO applauds DHS progress on lost and stolen passport reporting, and it cannot be overlooked that ESTA has already been implemented on a voluntary basis.
- *Be aware of the diplomacy boons associated with VWP.* Congress should not forget the diplomacy boons associated with VWP. Those who seek to

become member countries recognize that admission is a clear sign of trust from the United States. Congress should seek to provide oversight that recognizes that extinguishing this trust would be a public diplomacy disaster.

- *Ensure that ESTA presses forward.* January 2009 will be the first time that ESTA will go mandatory. ESTA is vital to both diplomacy and security, helping to prevent those who wish to do us harm from entering the country. While Congress should push to make ESTA more user-friendly, it should not use the hearing as a means to stagnate its implementation.
- *Remember that killing VWP could mean the death of other security measures.* US-VISIT exit efforts would be compromised because the program would incur difficulties tracking the exit of visitors without the data set provided by VWP. Furthermore, it would be hard to amass any data regarding visa compliance rates.

**Wait and Listen.** DHS emphasizes that there is good news to share and that the GAO report was simply premature. Hopefully Congress will use today's hearing as an opportunity to ask thought-provoking questions while also listening to the to the Department's answers.

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