

ISSUE BRIEF

No. 3565 | APRIL 12, 2012

The Visa Waiver Program: Time for Nations to Bear the Consequences of Non-Compliance

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Member expansion is not the only thing that is on hold when it comes to the Visa Waiver Program (VWP). Since 2007, VWP partner nations have been required to enter into three information-sharing agreements with the United States as a stipulation of membership. Through these agreements, member nations share data with the U.S. on known or suspected terrorists and other criminals, as well as information on lost or stolen passports. Yet as of March 2012, the Department of Homeland Security (DHS) reported that only approximately half of the 36 member countries had fully complied.

It has now been nearly five years since the 9/11 Commission Act of 2007 was passed requiring all current and future VWP members to enter into information-sharing agreements with the U.S. The period

for timely compliance has clearly come and gone. It is time for DHS to make VWP partner nations understand that these information-sharing agreements are a central tenet of the program and mandatory for continued membership.

The Visa Waiver Program.

Begun in 1986, the Visa Waiver Program (VWP) allows citizens from member nations to travel to the United States for up to 90 days without first obtaining a visa. Visitors who wish to enter through the program must first complete an application through the online Electronic System for Travel Authorization (ESTA). Through ESTA, potential travelers are screened to ensure that they do not pose a security risk to the United States. Once vetted and approved, travelers are then made eligible for visa-free travel to the United States for a period of two years.

To gain membership in the program under the current requirements, a nation must:

- Have a non-immigrant visa refusal rate of no more than 3 percent (the percentage of visa applicants denied by the State Department from a particular nation);

- Issue all residents secure, machine-readable biometric passports; and
- Meet a determination that membership presents no threat to U.S. law enforcement or security interests.

Presently, 36 nations are members of the Visa Waiver Program. Between 2005 and 2010, 98 million visitors entered the United States from these countries through the VWP. During their stays, these individuals visited American shops, hotels, and restaurants, infusing money directly into the U.S. economy. In fiscal year 2008, VWP visitors spent an estimated \$100 billion here. These benefits only continue once a traveler returns home with positive memories of the U.S., helping to improve America's image abroad.

A Critical Counterterrorism Tool. Of course, the Visa Waiver Program offers more than just economic and public diplomacy benefits to the United States. Since September 11, measures have been taken to modernize the program and enhance related security measures.

In addition to pre-screening applicants through ESTA to ensure that potential travelers do not pose a

This paper, in its entirety, can be found at <http://report.heritage.org/ib3565>

Produced by the Douglas and Sarah Allison Center for Foreign Policy Studies

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security risk to the United States, all current and future members are now required to sign a series of information-sharing agreements with the United States.

With the passage of the Implementing Recommendations of the 9/11 Commission Act of 2007, Congress required that all current and future VWP member nations share information with the United States regarding individuals traveling to the U.S. who could pose a security threat. To satisfy this requirement, DHS requires that member nations enter into the following agreements:

- **Homeland Security Presidential Directive (HSPD)-6:** HSPD-6 agreements require the sharing of watch list information on known or suspected terrorists. According to the Government Accountability Office, as of March 2012, 24 of the 36 VWP member countries had signed and 13 had begun sharing information under the HSPD-6 agreement.
- **Preventing and Combating Serious Crime (PCSC):** PCSC agreements provide for the automatic, reciprocal exchange of biographic, biometric, and

criminal data for law enforcement purposes. As of March 2012, DHS indicates that 23 of the 36 nations had signed the PCSC agreement. Due to necessary network and technological upgrades, however, the number of nations actually sharing information under PCSC appears to be significantly lower.

- **Lost and Stolen Passports (LASP):** LASP agreements require that VWP countries share data with the U.S. on lost or stolen passports, either through Interpol or other means as designated by the Secretary of Homeland Security. As of March 2012, all 36 member countries had signed LASP agreements and were sharing relevant information on lost and stolen passports with the U.S.

Consequences of Continued Non-Compliance. Last year, DHS indicated that it had developed a compliance schedule for finalizing the last of the information-sharing agreements with VWP member nations by June 2012. Now, two months out from this deadline, it seems highly unlikely that this goal will be met.

Nearly five years since the Implementing Recommendations of the 9/11 Commission Act of 2007

was passed—calling on VWP member nations to sign these information-sharing agreements with the U.S.—many of the remaining nations continue to resist on the basis of broad political or restrictive privacy concerns. It is time, however, that the Department of Homeland Security make the consequences of continued non-compliance clear, up to and including expulsion from the program.

While federal officials have indicated that termination of program membership would be less than desirable, the importance of achieving full compliance for U.S. security must not be ignored. The period for timely compliance has clearly come and gone; it is time that DHS make it clear that continued non-compliance is not an option.

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