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Visa Waiver Program Modernization for Prosperity and Security

Jessica Zuckerman and James Dean

Today, Congressman Mike Quigley (D-IL)—along with several co-sponsors from both parties—introduced the Visa Waiver Program Enhanced Security and Reform Act. The bill, in consultation with the Departments of Homeland Security (DHS), Justice, and State, offers updated refinements to last year's H.R. 959. These include several key reforms to modernize the Visa Waiver Program (VWP), including updated eligibility criteria and a reinstatement of the Secretary of Homeland Security's waiver authority.

With the VWP having been placed largely on hold since 2008, it is due time for Congress to support modernization in partnership with allies who are ready and willing to advance international travel security as they join the VWP. Both America's allies and America's security and prosperity demand it.

The Visa Waiver Program. Quigley's co-sponsors include Representatives Steve Chabot (R-OH), Ileana Ros-Lehtinen (R-FL), Dan Burton (R-IN), Gregory Meeks (D-NY), and Brian Higgins (D-NY). Leading the charge in the Senate are Senators Barbara Mikulski (D-MD) and co-sponsor Mark Kirk (R-IL).

First established in 1986, the VWP allows for visa-free travel for up to 90 days for travelers from member nations. By facilitating travel and tourism, the program helps to encourage commerce, tourism, and professional and cultural interchange between the U.S. and its allies while at the same time serving to enhance counterterrorism and security.

In order to gain membership in the program, a nation must:

- Have a specific non-immigrant visa refusal rate (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.

Additional security measures put into place post-9/11, through the Implementing Recommendations of the 9/11 Commission Act of 2007, must also be met. These include enhanced law enforcement and security data sharing, increased security at member nation airports, and certification of the reporting of lost or stolen passports.

Member nations' citizens seeking entry through the VWP must first apply for authorization through the program's online portal. Through the Electronic System for Travel Authorization (ESTA), potential

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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.

However, ESTA eligibility does not guarantee entry into the United States. Immigration officials at the port of entry still have the authority to stop entry by people who have gone through ESTA.

Path to Greater Prosperity and Security.

According to the latest figures from the Congressional Research Service, in fiscal year (FY) 2009, 16.2 million visitors entered the United States under the VWP, making up nearly 51 percent of all foreign visitors to the United States during the same period. Visiting U.S. restaurants, shops, and hotels, VWP visitors infused a total of approximately \$100 billion into the U.S. economy in FY 2008, contributing to a travel industry that supports nearly 14 million American jobs.

In addition to these many economic benefits, the VWP also serves to enhance U.S. national security. Countries participating in the VWP must meet higher standards in terms of law enforcement, counterterrorism, border control, document security, and information and data sharing than non-VWP countries. Likewise, rather than being subject to an interview by a consular officer, as is required of all travelers seeking to obtain a U.S. visa, VWP applicants are determined to be eligible through the electronic ESTA system. This practice allows the State Department to focus interview requirements on specific countries, classes of travelers, or suspect individuals that represent security threats or concerns, rather than having to interview 100 percent of U.S.-bound international travelers.

Refusal Rates and Modernization. Despite the many benefits of the VWP, only one nation (Greece) has been brought into the program since 2008. Congress largely blocked expansion of the VWP until a system to biometrically track the exits of all foreign visitors from U.S. airports was implemented. This mandate was then tied to the ability of the Department of Homeland Security (DHS) to consider the admittance of nations with visa refusal rates between 3 percent and 10 percent that otherwise met the

requirements of the program. When DHS had not implemented a biometric air exit program by July 1, 2009, this waiver authority was revoked. DHS is now prohibited from offering admittance into the VWP to any country with a visa refusal rate that exceeds 3 percent, greatly inhibiting the inclusion of allies who are ready and willing to advance security cooperation with the United States.

At the same time, the use of the visa refusal rate as a metric to determine a country's eligibility to participate in the VWP also raises questions of efficacy. Refusals are extremely subjective determinations made by U.S. consulate officers. Visa refusal rates are also potentially prone to inflation. For example, if an individual submits multiple visa applications within a year and all are denied, each application counts toward the country's visa refusal rate.

Further, visa refusals may not be made only on the premise of potential overstay issues. A country's actual visa overstay rate, as determined by DHS, would serve as a more accurate metric for determining the risk of a country's citizens abusing their terms of entry within the VWP.

The Visa Waiver Program Enhanced Security and Reform Act would take action on both of these fronts, employing both visa refusal rates and overstay rates as eligibility criteria and reinstating the Secretary of Homeland Security's ability to waive the 3 percent refusal rate requirement for otherwise eligible nations.

End the Waiting Game. Key U.S. friends and allies—such as NATO allies Poland, Bulgaria, Romania, and Croatia and other friendly countries in southeast Europe and the Western Hemisphere—stand ready and waiting to join the VWP. Since 2008, however, the program's expansion has largely been put on hold. With the benefits of the program clear, it is due time that Congress end the waiting game.

—*Jessica Zuckerman is a Research Assistant in the Douglas and Sarah Allison Center for Foreign Policy Studies, a division of the Kathryn and Shelby Cullom Davis Institute for International Studies, at The Heritage Foundation, and James Dean is Deputy Director of Foreign, Defense, Trade, and Homeland Security Policy in the Government Studies Department at The Heritage Foundation.*