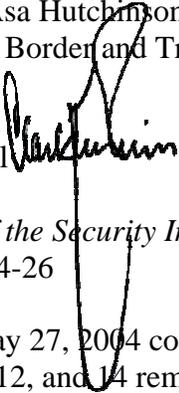




Homeland
Security

June 23, 2004

MEMORANDUM FOR: The Honorable Asa Hutchinson
Under Secretary, Border and Transportation Security Directorate

FROM: Clark Kent Ervin 
Inspector General

SUBJECT: *An Evaluation of the Security Implications of the Visa Waiver
Program, OIG-04-26*

This is in response to your memorandum of May 27, 2004 concerning the subject report. Recommendations 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, and 14 remain resolved-open. Recommendations 5 and 13 are closed and require no further action. Following are our evaluations of your responses to the recommendations in our report.

Recommendation 1 remains resolved-open. Designate a VWP program manager with clearly defined responsibilities and authorities.

BTS response: BTS has taken responsibility for the VWP country review process and will work with component agencies to define and assign other VWP programmatic responsibilities. Over the past three months, the BTS program manager has organized the IWG [Interagency Working Group] to establish country protocols, organize assessment trips, and develop budget and personnel plans. These plans have been closely monitored by me and other DHS senior leadership including A/S [Assistant Secretary] Verdery and D/S [Deputy Secretary] Loy.

OIG evaluation: BTS' response reflects progress on pending VWP issues, but leaves unclear whether the "BTS program manager" (who has organized the IWG, organized assessment trips, and developed budget and personnel plans) has clearly defined responsibilities and authorities as the *VWP program manager*. Please provide us with clarification of the responsibilities and authorities of the VWP program manager and who will be responsible for "other VWP programmatic responsibilities" by October 31, 2004.

Recommendation 2 remains resolved-open. Develop a plan to conduct the mandated VWP annual reports.

BTS response: As part of the program management, BTS will work with component agencies to define and assign responsibility for the preparation of the annual “visa waiver overstay” reports.

OIG evaluation: BTS’ intention to develop a plan to prepare the VWP annual reports is responsive to our recommendation. Please provide us with a copy of the plan to prepare and submit the VWP annual reports by October 31, 2004.

Recommendation 3 remains resolved-open. Develop protocols and a plan to conduct biennial country reviews.

BTS response: BTS has taken responsibility for the VWP country review process and reconvened the VWP Interagency Working Group (IWG) originally convened by the Department of Justice’s Executive Office of National Security (EONS) prior to the creation of the Department of Homeland Security (DHS) and the transfer of responsibility for the program to the Secretary of Homeland Security. The IWG held its first meeting in early March [2004] specifically to develop the plan for the VWP country assessments. The protocol is being finalized. DHS is committed to having these reviews completed by October [2004].

OIG evaluation: BTS’ effort to develop the interagency VWP protocol and its commitment to complete the biennial country reviews by October 2004 is responsive to our recommendation. Please provide us with copies of the VWP protocols and completed country reviews by October 31, 2004.

Recommendation 4 remains resolved-open. Provide funding to support the conduct of the country reviews.

BTS response: DHS is committed to the successful completion of the first round of reviews by October [2004] and is identifying funding for the project. As BTS completes its policy analysis of the country reviews it will work with the appropriate bureau to ensure long-term funding.

OIG evaluation: BTS’ effort to identify current and long-term funding for the country reviews is responsive to our recommendation. Please provide us with a copy of the budget plan for funding the country reviews by October 31, 2004.

Recommendation 5 is closed: Develop a process for reviewing the probationary designation of Belgium, so that a decision can be rendered prior to May 15, 2004.

BTS response: The interim rule dated February 28, 2003 and published in the Federal Register states that the Department of Justice, in consultation with the Department of State, determined that “...Belgium will be allowed to continue participating in the VWP on a provisional basis for one year, with another evaluation to be conducted at that time...” Belgium is not automatically terminated from the program after one year. The review of Belgium is included in the schedule for reviews to be completed in October [2004].

OIG evaluation: We note the clarification from BTS that Belgium was “not automatically terminated” from the VWP after one year, notwithstanding the February 28, 2003 determination to

place Belgium's VWP participation "on a provisional basis for one year." During discussions on this point with BTS and CBP officials, they did not provide this interpretation to us prior to publication of our report, nor had it been communicated to Belgian officials who met with us in January 2004. The recommendation is closed based on this response.

Recommendation 6 remains resolved-open. Develop a process comprehensively to check all lost and stolen passport (LASP) data provided by VWP governments against entry and exit data in U.S. systems.

BTS response: BTS concurs with the recommendation. Procedures will be developed to check the lost and stolen passport data against U.S. entry and exit system data. Together with our colleagues in the Department of State and our foreign counterparts, DHS is addressing security challenges posed by lost and stolen passports. In most cases, countries are able to identify the misuse of their own lost or stolen travel documents when presented at their own borders; however, without a system for international sharing of this data, to date it has not been possible to access this data from other countries.

OIG evaluation: BTS' commitment to develop procedures to check lost and stolen passports data against U.S. entry and exit system data is responsive to our recommendation. Please provide us with a copy of the procedures to check lost and stolen passport data by October 31, 2004.

Recommendation 7 remains resolved-open. Develop procedures to collect and analyze data concerning the fraudulent use of VWP passports.

BTS response: BTS concurs with the recommendation. BTS component agencies will work together to develop procedures to collect and analyze fraudulent VWP passport usage data. The VWP countries under review have been requested to provide the U.S. with the data for the past 10 years. We expect to receive the information by the end of the current site visit schedule in July and will evaluate and monitor the information and the process for its continued timely submission.

OIG evaluation: BTS' commitment to develop procedures to collect and analyze data concerning the fraudulent use of VWP passports is responsive to our recommendation. Please provide us with a copy of the procedures to collect and analyze data concerning the fraudulent use of VWP passports by October 31, 2004.

Recommendation 8 remains resolved-open. Include in the country review protocols provisions to review document manufacturing and issuing security practices.

BTS response: The interagency protocol already contains a provision for the review of document manufacturing and issuing security practices. For example, country site visits will include meetings with appropriate representatives of the entities (companies and government bureaus) responsible for the design, printing, manufacture, and security of the nominee country's passports and national identification cards (documents used to secure the passport).

OIG evaluation: BTS responds that the interagency protocol already contains a provision for the review of the document and manufacturing and issuing security practices. However, as BTS'

response to recommendation 3 states, the interagency protocol has yet to be approved. Please provide us with a copy of the approved interagency protocol by October 31, 2004.

Recommendation 9 remains resolved-open. Coordinate with the Department of State to establish a standard operating procedure for the systematic and proactive collection of LASP information.

BTS response: BTS agrees with this recommendation. The USG [United States government] is working in a variety of bilateral and multilateral fora to improve the collection of this information and is participating in talks about the dissemination of this information through INTERPOL.

OIG evaluation: BTS' response does not indicate what coordination is occurring between DHS and the Department of State to establish the standard operating procedure. As indicated in our report, most LASP information is reported by foreign governments through the Department of State, which highlights the need for such coordination. Please provide us with a copy of the procedure for the systematic and proactive collection of LASP information by October 31, 2004.

Recommendation 10 remains resolved-open. Require that inventory control numbers and passport numbers be queried in lookout systems.

BTS response: While BTS agrees with this recommendation in principal (sic), there are practical problems which must be resolved. Unless the carriers are required to provide both numbers through APIS, the CBP officer at the port of entry would have to do two separate queries, thereby increasing the time to complete an inspection.

OIG evaluation: BTS' response correctly states that there are "practical problems which must be resolved." As indicated in our report, absent such a requirement, and its implementation by POE inspectors, lost or stolen passports from VWP countries using the two-number system may be used to bypass U.S. lookout systems. Please provide us with a copy of the instructions from CBP headquarters that require POE inspectors to query the lookout systems using both the passport number and the inventory control number for *VWP passports from countries which use the two-number system* by October 31, 2004.

Recommendation 11 remains resolved-open. Review current policies that allow the return of fraudulent travel documents to those who presented them when they are sent back to their countries of origin.

BTS response: BTS agrees with this recommendation. While Annex 9 of the International Civil Aviation organization (sic) (ICAO) Chicago Convention addresses this and outlines the steps to take so that documents are not returned to the individual, these issues must be continued (sic) to be addressed and additional procedures developed if necessary.

OIG evaluation: BTS' review of policies related to the disposition of fraudulent documents presented to POE inspectors is responsive to our recommendation. Please provide us with a copy of the new procedures governing the return of fraudulent documents to travelers by October 31, 2004.

Recommendation 12 remains resolved-open. Require, as soon as US-VISIT capabilities permit, that VWP travelers be screened by US-VISIT procedures.

BTS response: VWP travelers will begin to be included in US-VISIT at air and seaports as of July [2004]. They will also be included in US-VISIT at land ports of entry in accordance with the current plan for US-VISIT expansion.

OIG evaluation: BTS' comment that VWP travelers will "begin to be included" in US-VISIT procedures at air and seaports as of July 2004, and at land POEs in accordance with the current plan for US-VISIT expansion is responsive to our recommendation. Please provide an implementation progress report of the inclusion of VWP travelers in US-VISIT procedures at entry ports by October 31, 2004.

Recommendation 13 is closed. Develop and recommend legislation to grant DHS waiver authority for VWP countries that cannot comply with the biometric passport deadline.

BTS response: Secretary Ridge and Secretary Powell [Department of State] have written to Congress to recommend that the Visa Waiver Biometric passport deadline be extended, and have testified on this topic before the House Judiciary Committee.

OIG evaluation: The action taken by DHS is responsive to our recommendation. The recommendation is closed.

Recommendation 14 remains resolved-open. Provide additional training in passport fraud detection for POE inspectors.

BTS response: BTS concurs with this recommendation. CBP will review and supplement, if necessary, training to detect fraudulent documents and other fraud at POEs.

OIG evaluation: BTS' plan to have CBP review and supplement its fraud detection training is responsive to our recommendation. Please provide us with a copy of the revised training program by October 31, 2004.

I appreciate the cooperation extended to us by your staff. If you have any questions, please contact me, or your staff may contact Robert L. Ashbaugh, Assistant Inspector General for Inspections, Evaluations, and Special Reviews at (202) 254-4100.

Attachment

cc: Ms. Anna F. Dixon
DHS Audit Liaison

Ms. Brenda Brockman-Smith
CBP Liaison