

BRAND USA EXTENSION ACT

JANUARY 13, 2020.—Committed to the Committee on the Whole House on the State of the Union and ordered to be printed

Mr. PALLONE, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 3851]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3851) to extend funding for Brand USA through fiscal year 2027, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Brand USA Extension Act”.

SEC. 2. THE CORPORATION FOR TRAVEL PROMOTION.

Subsection (b) of the Travel Promotion Act of 2009 (22 U.S.C. 2131(b)) is amended—

(1) in paragraph (2)(A)—

- (A) in clause (ii), by inserting “or foodservice” after “restaurant”;
- (B) in clause (v), by inserting “, such as outdoor recreation” before the semicolon at the end; and
- (C) in clause (viii), by inserting “commercial or private” before “passenger air sector”;
- (2) in paragraph (5)(A)—
 - (A) in clause (iii), by inserting “speaking conventions, sales missions,” after “trade shows,”;
 - (B) in clause (iv), by striking “and” at the end;
 - (C) in clause (v), by striking the period at the end and inserting “, and”;
 - and
 - (D) by adding at the end the following:
 - “(vi) to promote tourism to the United States through digital media, online platforms, and other appropriate medium.”; and
- (3) in paragraph (7)(C), by striking “3 days” and inserting “5 days”.

SEC. 3. ACCOUNTABILITY MEASURES.

Subsection (c) of the Travel Promotion Act of 2009 (22 U.S.C. 2131(c)) is amended—

- (1) in paragraph (2), by striking “\$500,000” and inserting “\$450,000”; and
- (2) in paragraph (3)—
 - (A) by redesignating subparagraph (I) as subparagraph (K);
 - (B) in subparagraph (H)(iii), by striking “and” at the end; and
 - (C) by inserting after subparagraph (H)(iii) the following:
 - “(I) a list of countries the Corporation identifies as emerging markets for tourism to the United States;
 - “(J) a description of the efforts the Corporation has made to promote tourism to rural areas of the United States; and”.

SEC. 4. EXTENSION OF FUNDING FOR BRAND USA.

Subsection (d) of the Travel Promotion Act of 2009 (22 U.S.C. 2131(d)) is amended—

- (1) in paragraph (2)(B), by striking “2020” and inserting “2027”;
- (2) in paragraph (3)(B)(ii), by striking “70 percent” and inserting “50 percent”;
- and
- (3) in paragraph (4)(B), by striking “2020” and inserting “2027”.

SEC. 5. PERFORMANCE PLAN.

Not later than 90 days after the date of the enactment of this Act, the Corporation for Travel Promotion shall make the performance metrics established pursuant to subsection (f)(1)(A) of the Travel Promotion Act of 2009 (22 U.S.C. 2131(f)(1)(A)) publicly available on the website of the Corporation.

SEC. 6. ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION FEE INCREASE.

Section 217(h)(3)(B)(i)(I) of the Immigration and Nationality Act (8 U.S.C. 1187(h)(3)(B)(i)(I)) is amended by striking “\$10” and inserting “\$17”.

I. PURPOSE AND SUMMARY

H.R. 3851, the “Brand USA Extension Act”, was introduced on July 18, 2019, by Reps. Welch (D–VT), Bilirakis (R–FL), Titus (D–NV), and Long (R–MO) and referred to the Committee on Energy and Commerce, and in addition, to the Committee on Homeland Security. H.R. 3851 would extend funding for Brand USA through fiscal year 2027 and increase the fee on foreign visitors used to partially fund the program. The legislation also reduces the percentage of in-kind contributions from the private sector that can count towards public matching funds; clarifies the qualifications for the members on the board of directors for Brand USA; clarifies additional methods by which Brand USA may carry out its duties; and adds additional transparency and accountability measures.

II. BACKGROUND AND NEED FOR LEGISLATION

The travel and tourism industry plays a significant role in the U.S. economy, supporting 15.7 million American jobs.¹ International travel to the United States represents the single largest services-sector export and one of the largest U.S. export categories overall, accounting for 10 percent of all U.S. exports of goods and services.² Compared to domestic tourists, overseas travelers to the U.S. generally spend more per traveler than their domestic counterparts, at an average of \$4,200 spent per trip per person.³

The Travel Promotion Act of 2009 (TPA) established the public-private Corporation for Travel Promotion, later renamed Brand USA, as a national, coordinated marketing organization to promote international travel to the United States.⁴ Brand USA plans advertising programs and activities, along with several industry advisory groups. It also develops industry partnerships to help further that goal. Brand USA is governed by a board of directors whose members have knowledge of international travel promotion and marketing and are appointed by the Secretary of Commerce.

Brand USA is financed by a combination of public and private funds. Private-sector funding may currently come from either cash or in-kind contributions, with in-kind contributions able to make up a maximum of 70 percent of the private sector's financial contribution to the organization.⁵ For fiscal year 2018, Brand USA received \$108 million in contributions from private industry with 43 percent from cash contributions and 57 percent from in-kind contributions.⁶ Public matching funds are contributed from the Travel Promotion Fund, a U.S. Treasury fund sourced by a portion of the Electronic System for Travel Authorization (ESTA) fee, which is collected from foreign visitors to the United States by the Department of Homeland Security.⁷ TPA authorizes a maximum annual public contribution of \$100 million at a private-sector matching ratio of one-to-one.⁸ No U.S. taxpayer dollars are used to fund Brand USA.

TPA assigns to the Department of Commerce most Brand USA oversight responsibilities, including approving the organization's annual goals; reviewing private-sector contributions, including assessing the fair market value of in-kind goods and services; and directing Treasury to disburse federal matching funds after having approved Brand USA's requests and documentation. Brand USA also is required to make its budget and the result of an independently conducted annual financial audit available to Congress. TPA requires that Brand USA provide an explanation in its budget for any single expenditure that exceeds \$500,000.⁹

¹U.S. Travel, *U.S. Travel Answer Sheet* (Mar. 2019) (www.ustravel.org/system/files/media_root/document/Research_Fact-Sheet_US-Travel-Answer-Sheet.pdf).

²International Trade Administration, *Fast Facts: United States Travel and Tourism Industry 2018* (Oct. 2019) (travel.trade.gov/outreachpages/download_data_table/Fast_Facts_2018.pdf).

³See Note 1.

⁴Pub. L. No. 111-145.

⁵Pub. L. No. 113-235.

⁶Brand USA, *Annual Report: Fiscal Year 2018, October 1, 2017 to September 30, 2018* (www.thebrandusa.com/about/reports).

⁷See Note 4.

⁸*Id.*

⁹See Note 5.

In December 2014, as part of the Consolidated and Further Continuing Appropriations Act, 2015, Congress reauthorized TPA through September 30, 2020.¹⁰

H.R. 3851 is needed to ensure continued funding for Brand USA and to protect and promote the U.S. tourism industry. This legislation provides a necessary awareness of the many points of interest beyond our gateway cities that do not have the resources to advertise their many benefits to a worldwide audience.

III. COMMITTEE HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearings were used to develop or consider H.R. 3851:

The Subcommittee on Consumer Protection and Commerce held a legislative hearing on October 24, 2019, on H.R. 3851, the “Brand USA Extension Act” and one other bill. The hearing was entitled, “Reauthorizing Brand USA and the U.S. SAFE WEB Act.” The Subcommittee received testimony from the following witnesses:

- Christopher L. Thompson, President and CEO, Brand USA;
- Tori Barnes, Executive Vice President, U.S. Travel Association; and
- Aaron J. Burstein, Partner, Wilkinson Barker Knauer LLP.

IV. COMMITTEE CONSIDERATION

H.R. 3851, the “Brand USA Extension Act”, was introduced on July 18, 2019 by Reps. Welch (D-VT), Bilirakis (R-FL), Titus (D-NV), and Long (R-MO) and referred to the Committee on Energy and Commerce, and in addition, to the Committee on Homeland Security. The bill was subsequently referred to the Subcommittee on Consumer Protection and Commerce on July 22, 2019. On November 14, 2019, the Subcommittee met in open markup session, pursuant to notice, to consider H.R. 3851. During consideration of the bill, an amendment offered by Mr. Carter was adopted by voice vote. Subsequently, the Subcommittee on Consumer Protection and Commerce agreed to a motion by Ms. Schakowsky, Chair of the subcommittee, to favorably forward H.R. 3851, as amended, to the full Committee on Energy and Commerce by a voice vote.

On November 20, 2019, the full Committee met in open markup session, pursuant to notice, to consider H.R. 3851. Subsequently, a motion by Mr. Pallone, Chairman of the committee, to order H.R. 3851 reported favorably to the House, as amended, was agreed to by a voice vote, a quorum being present.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there were X record votes taken on H.R. 3851.

¹⁰*Id.*

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures.

VIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

IX. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to extend funding for Brand USA and bolster transparency and accountability measures in the Travel Promotion Act of 2009.

X. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 3851 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

XI. COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

XII. EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 3851 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIII. ADVISORY COMMITTEE STATEMENT

No advisory committee within the meaning of section 5(b) of the Federal Advisory Committee Act was created by this legislation.

XIV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XV. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 designates that the short title may be cited as the “Brand USA Extension Act”.

Sec. 2. The corporation for travel promotion

This section amends the TPA to clarify with respect to qualifications for members on the board of directors for Brand USA that: expertise and experience in the foodservice sector may substitute expertise and experience in the restaurant sector; expertise and experience in outdoor recreation qualifies as expertise and experience in the attractions or recreations sector; and expertise and experience in either commercial or private passenger air sector also qualifies for expertise and experience in the passenger air sector.

This section further adds “speaking conventions, sales missions” to methods by which Brand USA can promote travel to the United States. It also adds that Brand USA should promote tourism through digital media, online platforms, and other appropriate medium. It also specifies that board members should be given at least five days advanced notice instead of three before voting on major campaigns.

Sec. 3. Accountability measures

This section amends the TPA to reduce from \$500,000 to \$450,000 the dollar threshold for expenditures that require an explanation. It also adds two new reporting requirements to the annual report to Congress: a list of countries Brand USA identifies as emerging markets for tourism to the U.S. and a description of efforts to promote tourism to rural areas of the United States.

Sec. 4. Extension of funding for Brand USA

This section amends the TPA to extend funding for Brand USA through fiscal year 2027. It also reduces from 70 to 50 the percentage of in-kind contributions from the private sector that can be used to meet the matching requirement for public funds.

Sec. 5. Performance plan

This section requires Brand USA to make performance metrics publicly available on Brand USA’s website.

Sec. 6. Electronic System for Travel Authorization fee increase

This section amends the Immigration and Nationality Act to increase the Electronic System for Travel Authorization base fee from \$10 to \$17.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TRAVEL PROMOTION ACT OF 2009

* * * * *

SEC. 9. TRAVEL PROMOTION ACT OF 2009.

(a) **SHORT TITLE.**—This section may be cited as the “Travel Promotion Act of 2009”.

(b) **THE CORPORATION FOR TRAVEL PROMOTION.**—

(1) **ESTABLISHMENT.**—The Corporation for Travel Promotion is established as a nonprofit corporation. The Corporation shall not be an agency or establishment of the United States Government. The Corporation shall be subject to the provisions of the District of Columbia Nonprofit Corporation Act (D.C. Code, section 29-1001 et seq.), to the extent that such provisions are consistent with this subsection, and shall have the powers conferred upon a nonprofit corporation by that Act to carry out its purposes and activities.

(2) **BOARD OF DIRECTORS.**—

(A) **IN GENERAL.**—The Corporation shall have a board of directors of 11 members with knowledge of international travel promotion or marketing, broadly representing various regions of the United States, who are United States citizens. At least 5 members of the board shall have experience working in United States multinational entities with marketing budgets. At least 2 members of the board shall be audit committee financial experts (as defined by the Securities and Exchange Commission in accordance with section 407 of Public Law 107–204 (15 U.S.C. 7265)). All members of the board shall be a current or former chief executive officer, chief financial officer, or chief marketing officer, or have held an equivalent management position. Members of the board shall be appointed by the Secretary of Commerce (after consultation with the Secretary of Homeland Security and the Secretary of State), as follows:

(i) 1 shall have appropriate expertise and experience in the hotel accommodations sector;

(ii) 1 shall have appropriate expertise and experience in the restaurant or *foodservice* sector;

(iii) 1 shall have appropriate expertise and experience in the small business or retail sector or in associations representing that sector;

(iv) 1 shall have appropriate expertise and experience in the travel distribution services sector;

(v) 1 shall have appropriate expertise and experience in the attractions or recreations sector, *such as outdoor recreation*;

(vi) 1 shall have appropriate expertise and experience as officials of a city convention and visitors' bureau;

(vii) 2 shall have appropriate expertise and experience as officials of a State tourism office;

(viii) 1 shall have appropriate expertise and experience in the *commercial or private* passenger air sector;

(ix) 1 shall have appropriate expertise and experience in immigration law and policy, including visa requirements and United States entry procedures; and

(x) 1 shall have appropriate expertise in the land or sea passenger transportation sector.

(B) INCORPORATION.—The members of the initial board of directors shall serve as incorporators and shall take whatever actions are necessary to establish the Corporation under the District of Columbia Nonprofit Corporation Act (D.C. Code, section 29-301.01 et seq.).

(C) TERM OF OFFICE.—The term of office of each member of the board appointed by the Secretary shall be 3 years, except that, of the members first appointed—

(i) 3 shall be appointed for terms of 1 year;

(ii) 4 shall be appointed for terms of 2 years; and

(iii) 4 shall be appointed for terms of 3 years.

(D) REMOVAL FOR CAUSE.—The Secretary of Commerce may remove any member of the board for good cause.

(E) VACANCIES.—Any vacancy in the board shall not affect its power, but shall be filled in the manner required by this subsection. Any member whose term has expired may serve until the member's successor has taken office, or until the end of the calendar year in which the member's term has expired, whichever is earlier. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which that member's predecessor was appointed shall be appointed for the remainder of the predecessor's term. No member of the board shall be eligible to serve more than 2 consecutive full 3-year terms.

(F) ELECTION OF CHAIRMAN AND VICE CHAIRMAN.—Members of the board shall annually elect one of the members to be Chairman and elect 1 or 2 of the members as Vice Chairman or Vice Chairmen.

(G) STATUS AS FEDERAL EMPLOYEES.—Notwithstanding any provision of law to the contrary, no member of the board may be considered to be a Federal employee of the United States by virtue of his or her service as a member of the board.

(H) COMPENSATION; EXPENSES.—No member shall receive any compensation from the Federal government for serving on the Board. Each member of the Board shall be paid actual travel expenses and per diem in lieu of subsistence expenses when away from his or her usual place of residence, in accordance with section 5703 of title 5, United States Code.

(3) OFFICERS AND EMPLOYEES.—

(A) IN GENERAL.—The Corporation shall have an executive director and such other officers as may be named and

appointed by the board for terms and at rates of compensation fixed by the board. No individual other than a citizen of the United States may be an officer of the Corporation. The Corporation may hire and fix the compensation of such employees as may be necessary to carry out its purposes. No officer or employee of the Corporation may receive any salary or other compensation (except for compensation for services on boards of directors of other organizations that do not receive funds from the Corporation, on committees of such boards, and in similar activities for such organizations) from any sources other than the Corporation for services rendered during the period of his or her employment by the Corporation. Service by any officer on boards of directors of other organizations, on committees of such boards, and in similar activities for such organizations shall be subject to annual advance approval by the board and subject to the provisions of the Corporation's Statement of Ethical Conduct. All officers and employees shall serve at the pleasure of the board.

(B) NONPOLITICAL NATURE OF APPOINTMENT.—No political test or qualification shall be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, or employees of the Corporation.

(4) NONPROFIT AND NONPOLITICAL NATURE OF CORPORATION.—

(A) STOCK.—The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(B) PROFIT.—No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

(C) POLITICS.—The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(D) SENSE OF CONGRESS REGARDING LOBBYING ACTIVITIES.—It is the sense of Congress that the Corporation should not engage in lobbying activities (as defined in section 3(7) of the Lobbying Disclosure Act of 1995 (5 U.S.C. 1602(7)).

(5) DUTIES AND POWERS.—

(A) IN GENERAL.—The Corporation shall develop and execute a plan—

(i) to provide useful information to foreign tourists, business people, students, scholars, scientists, and others interested in traveling to the United States, including the distribution of material provided by the Federal government concerning entry requirements, required documentation, fees, processes, and information concerning declared public health emergencies, to prospective travelers, travel agents, tour operators, meeting planners, foreign governments, travel media and other international stakeholders;

(ii) to identify, counter, and correct misperceptions regarding United States entry policies around the world;

(iii) to maximize the economic and diplomatic benefits of travel to the United States by promoting the United States of America to world travelers through the use of, but not limited to, all forms of advertising, outreach to trade shows, *speaking conventions*, *sales missions*, and other appropriate promotional activities;

(iv) to ensure that international travel benefits all States and territories of the United States and the District of Columbia, and to identify opportunities and strategies to promote tourism to rural and urban areas equally, including areas not traditionally visited by international travelers; [and]

(v) to give priority to the Corporation's efforts with respect to countries and populations most likely to travel to the United States [.] and

(vi) to promote tourism to the United States through digital media, online platforms, and other appropriate medium.

(B) SPECIFIC POWERS.—In order to carry out the purposes of this subsection, the Corporation may—

(i) obtain grants from and make contracts with individuals and private companies, State, and Federal agencies, organizations, and institutions;

(ii) hire or accept the voluntary services of consultants, experts, advisory boards, and panels to aid the Corporation in carrying out its purposes; and

(iii) take such other actions as may be necessary to accomplish the purposes set forth in this subsection.

(C) PUBLIC OUTREACH AND INFORMATION.—The Corporation shall develop and maintain a publicly accessible website.

(6) OPEN MEETINGS.—Meetings of the board of directors of the Corporation, including any committee of the board, shall be open to the public. The board may, by majority vote, close any such meeting only for the time necessary to preserve the confidentiality of commercial or financial information that is privileged or confidential, to discuss personnel matters, or to discuss legal matters affecting the Corporation, including pending or potential litigation.

(7) MAJOR CAMPAIGNS.—The board may not authorize the Corporation to obligate or expend more than \$25,000,000 on any advertising campaign, promotion, or related effort unless—

(A) the obligation or expenditure is approved by an affirmative vote of at least 2/3 of the members of the board present at the meeting;

(B) at least 6 members of the board are present at the meeting at which it is approved; and

(C) each member of the board has been given at least [3 days] 5 days advance notice of the meeting at which the vote is to be taken and the matters to be voted upon at that meeting.

(8) FISCAL ACCOUNTABILITY.—

(A) FISCAL YEAR.—The Corporation shall establish as its fiscal year the 12-month period beginning on October 1.

(B) BUDGET.—The Corporation shall adopt a budget for each fiscal year.

(C) ANNUAL AUDITS.—The Corporation shall engage an independent accounting firm to conduct an annual financial audit of the Corporation's operations and shall publish the results of the audit. The Comptroller General of the United States may review any audit of a financial statement conducted under this paragraph by an independent accounting firm and may audit the Corporation's operations at the discretion of the Comptroller General. The Comptroller General and the Congress shall have full and complete access to the books and records of the Corporation.

(D) PROGRAM AUDITS.—Not later than 2 years after the date of enactment of this section, the Comptroller General shall conduct a review of the programmatic activities of the Corporation for Travel Promotion. This report shall be provided to appropriate congressional committees.

(c) ACCOUNTABILITY MEASURES.—

(1) OBJECTIVES.—The Board shall establish annual objectives for the Corporation for each fiscal year subject to approval by the Secretary of Commerce (after consultation with the Secretary of Homeland Security and the Secretary of State). The Corporation shall establish a marketing plan for each fiscal year not less than 60 days before the beginning of that year and provide a copy of the plan, and any revisions thereof, to the Secretary.

(2) BUDGET.—The board shall transmit a copy of the Corporation's budget for the forthcoming fiscal year to the Secretary not less than 60 days before the beginning of each fiscal year, together with an explanation of any expenditure provided for by the budget in excess of ~~[\$500,000]~~ \$450,000 for the fiscal year. The Corporation shall make a copy of the budget and the explanation available to the public and shall provide public access to the budget and explanation on the Corporation's website.

(3) ANNUAL REPORT TO CONGRESS.—The Corporation shall submit an annual report for the preceding fiscal year to the Secretary of Commerce for transmittal to the Congress on or before the 15th day of May of each year. The report shall include—

(A) a comprehensive and detailed report of the Corporation's operations, activities, financial condition, and accomplishments under this section;

(B) a comprehensive and detailed inventory of amounts obligated or expended by the Corporation during the preceding fiscal year;

(C) a detailed description of each in-kind contribution, its fair market value, the individual or organization responsible for contributing, its specific use, and a justification for its use within the context of the Corporation's mission;

(D) an objective and quantifiable measurement of its progress, on an objective-by-objective basis, in meeting the objectives established by the board;

(E) an explanation of the reason for any failure to achieve an objective established by the board and any revisions or alterations to the Corporation's objectives under paragraph (1);

(F) a comprehensive and detailed report of the Corporation's operations and activities to promote tourism in rural and urban areas;

(G) a description of, and rationales for, the Corporation's efforts to focus on specific countries and populations;

(H)(i) a description of, and rationales for, the Corporation's combination of media channels employed in meeting the promotional objectives of its marketing campaign;

(ii) the ratio in which such channels are used; and

(iii) a justification for the use and ratio of such channels;

[and]

(I) a list of countries the Corporation identifies as emerging markets for tourism to the United States;

(J) a description of the efforts the Corporation has made to promote tourism to rural areas of the United States; and

[(I)] *(K) such recommendations as the Corporation deems appropriate.*

(4) **LIMITATION ON USE OF FUNDS.**—Amounts deposited in the Fund may not be used for any purpose inconsistent with carrying out the objectives, budget, and report described in this subsection.

(d) **MATCHING PUBLIC AND PRIVATE FUNDING.**—

(1) **ESTABLISHMENT OF TRAVEL PROMOTION FUND.**—There is hereby established in the Treasury a fund which shall be known as the Travel Promotion Fund.

(2) **FUNDING.**—

(A) **START-UP EXPENSES.**—The Secretary of the Treasury shall make available to the Corporation such sums as may be necessary, but not to exceed \$10,000,000, from amounts deposited in the general fund of the Treasury from fees under section 217(h)(3)(B)(i)(I) of the Immigration and Nationality Act (8 U.S.C. 1187(h)(3)(B)(i)(I)) to cover the Corporation's initial expenses and activities under this section. Transfers shall be made at least monthly, immediately following the collection of fees under section 217(h)(3)(B)(i)(I) of the Immigration and Nationality Act (8 U.S.C. 1187(h)(3)(B)(i)(I)), on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess or less than the amounts required to be transferred.

(B) **SUBSEQUENT YEARS.**—For each of fiscal years 2012 through **[2020]** 2027, from amounts deposited in the general fund of the Treasury during the preceding fiscal year from fees under section 217(h)(3)(B)(i)(I) of the Immigration and Nationality Act (8 U.S.C. 1187(h)(B)(i)(I)), the Secretary of the Treasury shall transfer not more than \$100,000,000 to the Fund, which shall be made available

to the Corporation, subject to paragraph (3) of this subsection, to carry out its functions under this section. Transfers shall be made at least quarterly on the basis of estimates by the Secretary, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess or less than the amounts required to be transferred.

(3) MATCHING REQUIREMENT.—

(A) IN GENERAL.—No amounts may be made available to the Corporation under this subsection after fiscal year 2011, except to the extent that—

(i) for fiscal year 2012, the Corporation provides matching amounts from non-Federal sources equal in the aggregate to 50 percent or more of the amount transferred to the Fund under paragraph (2); and

(ii) for any fiscal year after fiscal year 2012, the Corporation provides matching amounts from non-Federal sources equal in the aggregate to 100 percent of the amount transferred to the Fund under paragraph (2) for the fiscal year.

(B) GOODS AND SERVICES.—For the purpose of determining the amount received from non-Federal sources by the Corporation, other than money—

(i) the fair market value of goods and services (including advertising) contributed to the Corporation for use under this section may be included in the determination; but

(ii) the fair market value of such goods and services may not account for more than **[70 percent]** *50 percent* of the matching requirement under subparagraph (A) for the Corporation in any fiscal year.

(C) RIGHT OF REFUSAL.—The Corporation may decline to accept any contribution in-kind that it determines to be inappropriate, not useful, or commercially worthless.

(D) LIMITATION.—The Corporation may not obligate or expend funds in excess of the total amount received by the Corporation for a fiscal year from Federal and non-Federal sources.

(E) MAINTENANCE OF AN IN-KIND CONTRIBUTIONS POLICY.—The Corporation shall maintain an in-kind contributions policy.

(F) FORMALIZED PROCEDURES FOR IN-KIND CONTRIBUTIONS POLICY.—Not later than 90 days after the date of enactment of the Travel Promotion, Enhancement, and Modernization Act of 2014, the Secretary of Commerce, in coordination with the Corporation, shall establish formal, publicly available procedures specifying time frames and conditions for—

(i) making and agreeing to revisions of the Corporation's in-kind contributions policy; and

(ii) addressing and resolving disagreements between the Corporation and its partners, including the Secretary of Commerce, regarding the in-kind contributions policy.

- (G) BIENNIAL REVIEW OF PROCEDURES TO DETERMINE FAIR MARKET VALUE OF GOODS AND SERVICES.—The Corporation and the Secretary of Commerce (or their designees) shall meet on a biannual basis to review the procedures to determine the fair market value of goods and services received from non-Federal sources by the Corporation under subparagraph (B).
- (4) CARRYFORWARD.—
- (A) FEDERAL FUNDS.—Amounts transferred to the Fund under paragraph (2)(B) shall remain available until expended.
- (B) MATCHING FUNDS.—Any amount received by the Corporation from non-Federal sources in each of the fiscal years 2011 through ~~2020~~ 2027 that cannot be used to meet the matching requirement under paragraph (3)(A) for the fiscal year in which amount was collected may be carried forward and treated as having been received in the succeeding fiscal year for purposes of meeting the matching requirement of paragraph (3)(A) in such succeeding fiscal year.
- (f) ACCOUNTABILITY.—
- (1) PERFORMANCE PLANS AND MEASURES.—Not later than 90 days after the date of the enactment of the Travel Promotion, Enhancement, and Modernization Act of 2014, the Corporation shall—
- (A) establish performance metrics including, time frames, evaluation methodologies, and data sources for measuring—
- (i) the effectiveness of marketing efforts by the Corporation, including its progress in achieving the long-term goals of increased traveler visits to and spending in the United States;
 - (ii) whether increases in visitation and spending have occurred in response to external influences, such as economic conditions or exchange rates, rather than in response to the efforts of the Corporation; and
 - (iii) any cost or benefit to the economy of the United States; and
- (B) conduct periodic program evaluations in response to the data resulting from measurements under subparagraph (A).
- (2) GAO ACCOUNTABILITY.—Not later than 60 days after the date on which the Corporation receives a report from the Government Accountability Office with recommendations for the Corporation, the Corporation shall submit a report to Congress that describes the actions taken by the Corporation in response to the recommendations in such report.
- (g) PROCUREMENT REQUIREMENTS.—The Corporation shall—
- (1) establish a competitive procurement process; and
 - (2) certify in its annual report to Congress under subsection (c)(3) that any contracts entered into were in compliance with the established competitive procurement process.
- (h) TRAVEL PROMOTION FUND FEES.—Section 217(h)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1187(h)(3)(B)) is amended to read as follows:

“(B) FEES.—

“(i) IN GENERAL.—No later than 6 months after the date of enactment of the Travel Promotion Act of 2009, the Secretary of Homeland Security shall establish a fee for the use of the System and begin assessment and collection of that fee. The initial fee shall be the sum of—

“(I) \$10 per travel authorization; and

“(II) an amount that will at least ensure recovery of the full costs of providing and administering the System, as determined by the Secretary.

“(ii) DISPOSITION OF AMOUNTS COLLECTED.—Amounts collected under clause (i)(I) shall be credited to the Travel Promotion Fund established by subsection (d) of section 11 of the Travel Promotion Act of 2009. Amounts collected under clause (i)(II) shall be transferred to the general fund of the Treasury and made available to pay the costs incurred to administer the System.

“(iii) SUNSET OF TRAVEL PROMOTION FUND FEE.—The Secretary may not collect the fee authorized by clause (i)(I) for fiscal years beginning after September 30, 2014.”.

(i) OFFICE OF TRAVEL PROMOTION.—Title II of the International Travel Act of 1961 (22 U.S.C. 2121 et seq.) is amended by inserting after section 201 the following:

“SEC. 202. OFFICE OF TRAVEL PROMOTION.

“(a) OFFICE ESTABLISHED.—There is established within the Department of Commerce an office to be known as the Office of Travel Promotion.

“(b) DIRECTOR.—

“(1) APPOINTMENT.—The Office shall be headed by a Director who shall be appointed by the Secretary.

“(2) QUALIFICATIONS.—The Director shall be a citizen of the United States and have experience in a field directly related to the promotion of travel to and within the United States.

“(3) DUTIES.—The Director shall be responsible for ensuring the office is carrying out its functions effectively and shall report to the Secretary.

“(c) FUNCTIONS.—The Office shall—

“(1) serve as liaison to the Corporation for Travel Promotion established by subsection (b) of section 11 of the Travel Promotion Act of 2009 and support and encourage the development of programs to increase the number of international visitors to the United States for business, leisure, educational, medical, exchange, and other purposes;

“(2) work with the Corporation, the Secretary of State and the Secretary of Homeland Security—

“(A) to disseminate information more effectively to potential international visitors about documentation and procedures required for admission to the United States as a visitor;

“(B) to ensure that arriving international visitors are generally welcomed with accurate information and in an inviting manner;

“(C) to collect accurate data on the total number of international visitors that visit each State; and
 “(D) enhance the entry and departure experience for international visitors through the use of advertising, signage, and customer service; and
 “(3) support State, regional, and private sector initiatives to promote travel to and within the United States.
 “(d) REPORTS TO CONGRESS.—Within a year after the date of enactment of the Travel Promotion Act of 2009, and periodically thereafter as appropriate, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Homeland Security and Governmental Affairs, the Senate Committee on Foreign Relations, the House of Representatives Committee on Energy and Commerce, the House of Representatives Committee on Homeland Security, and the House of Representatives Committee on Foreign Affairs describing the Office’s work with the Corporation, the Secretary of State and the Secretary of Homeland Security to carry out subsection (c)(2).”
 (j) RESEARCH PROGRAM.—Title II of the International Travel Act of 1961 (22 U.S.C. 2121 et seq.), as amended by subsection (g), is further amended by inserting after section 202 the following:

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IMMIGRATION AND NATIONALITY ACT

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TITLE II—IMMIGRATION

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CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

* * * * *

VISA WAIVER PROGRAM FOR CERTAIN VISITORS

SEC. 217. (a) ESTABLISHMENT OF PROGRAM.—The Secretary of Homeland Security and the Secretary of State are authorized to establish a program (hereinafter in this section referred to as the “program”) under which the requirement of paragraph (7)(B)(i)(II) of section 212(a) may be waived by the Secretary of Homeland Security, in consultation with the Secretary of State, and in accordance with this section, in the case of an alien who meets the following requirements:

- (1) SEEKING ENTRY AS TOURIST FOR 90 DAYS OR LESS.—The alien is applying for admission during the program as a non-immigrant visitor (described in section 101(a)(15)(B)) for a period not exceeding 90 days.
- (2) NATIONAL OF PROGRAM COUNTRY.—The alien is a national of, and presents a passport issued by, a country which—
 - (A) extends (or agrees to extend), either on its own or in conjunction with one or more other countries that are described in subparagraph (B) and that have established with it a common area for immigration admissions, recip-

rocal privileges to citizens and nationals of the United States, and

(B) is designated as a pilot program country under subsection (c).

(3) PASSPORT REQUIREMENTS.—The alien, at the time of application for admission, is in possession of a valid unexpired passport that satisfies the following:

(A) MACHINE READABLE.—The passport is a machine-readable passport that is tamper-resistant, incorporates document authentication identifiers, and otherwise satisfies the internationally accepted standard for machine readability.

(B) ELECTRONIC.—Beginning on April 1, 2016, the passport is an electronic passport that is fraud-resistant, contains relevant biographic and biometric information (as determined by the Secretary of Homeland Security), and otherwise satisfies internationally accepted standards for electronic passports.

(4) EXECUTES IMMIGRATION FORMS.—The alien before the time of such admission completes such immigration form as the Secretary of Homeland Security shall establish.

(5) ENTRY INTO THE UNITED STATES.—If arriving by sea or air, the alien arrives at the port of entry into the United States on a carrier, including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a non-commercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations which has entered into an agreement with the Secretary of Homeland Security pursuant to subsection (e). The Secretary of Homeland Security is authorized to require a carrier conducting operations under part 135 of title 14, Code of Federal Regulations, or a domestic corporation conducting operations under part 91 of that title, to give suitable and proper bond, in such reasonable amount and containing such conditions as the Secretary of Homeland Security may deem sufficient to ensure compliance with the indemnification requirements of this section, as a term of such an agreement.

(6) NOT A SAFETY THREAT.—The alien has been determined not to represent a threat to the welfare, health, safety, or security of the United States.

(7) NO PREVIOUS VIOLATION.—If the alien previously was admitted without a visa under this section, the alien must not have failed to comply with the conditions of any previous admission as such a nonimmigrant.

(8) ROUND-TRIP TICKET.—The alien is in possession of a round-trip transportation ticket (unless this requirement is waived by the Secretary of Homeland Security under regulations or the alien is arriving at the port of entry on an aircraft operated under part 135 of title 14, Code of Federal Regulations, or a noncommercial aircraft that is owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations).

(9) AUTOMATED SYSTEM CHECK.—The identity of the alien has been checked using an automated electronic database con-

taining information about the inadmissibility of aliens to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found.

(10) ELECTRONIC TRANSMISSION OF IDENTIFICATION INFORMATION.—Operators of aircraft under part 135 of title 14, Code of Federal Regulations, or operators of noncommercial aircraft that are owned or operated by a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, carrying any alien passenger who will apply for admission under this section shall furnish such information as the Secretary of Homeland Security by regulation shall prescribe as necessary for the identification of any alien passenger being transported and for the enforcement of the immigration laws. Such information shall be electronically transmitted not less than one hour prior to arrival at the port of entry for purposes of checking for inadmissibility using the automated electronic database.

(11) ELIGIBILITY DETERMINATION UNDER THE ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION.—Beginning on the date on which the electronic system for travel authorization developed under subsection (h)(3) is fully operational, each alien traveling under the program shall, before applying for admission to the United States, electronically provide to the system biographical information and such other information as the Secretary of Homeland Security shall determine necessary to determine the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States. Upon review of such biographical information, the Secretary of Homeland Security shall determine whether the alien is eligible to travel to the United States under the program.

(12) NOT PRESENT IN IRAQ, SYRIA, OR ANY OTHER COUNTRY OR AREA OF CONCERN.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C)—

(i) the alien has not been present, at any time on or after March 1, 2011—

(I) in Iraq or Syria;

(II) in a country that is designated by the Secretary of State under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405) (as continued in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)), section 40 of the Arms Export Control Act (22 U.S.C. 2780), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or any other provision of law, as a country, the government of which has repeatedly provided support of acts of international terrorism; or

(III) in any other country or area of concern designated by the Secretary of Homeland Security under subparagraph (D); and

(ii) regardless of whether the alien is a national of a program country, the alien is not a national of—

(I) Iraq or Syria;

(II) a country that is designated, at the time the alien applies for admission, by the Secretary of State under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405) (as continued in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.)), section 40 of the Arms Export Control Act (22 U.S.C. 2780), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or any other provision of law, as a country, the government of which has repeatedly provided support of acts of international terrorism; or

(III) any other country that is designated, at the time the alien applies for admission, by the Secretary of Homeland Security under subparagraph (D).

(B) CERTAIN MILITARY PERSONNEL AND GOVERNMENT EMPLOYEES.—Subparagraph (A)(i) shall not apply in the case of an alien if the Secretary of Homeland Security determines that the alien was present—

(i) in order to perform military service in the armed forces of a program country; or

(ii) in order to carry out official duties as a full time employee of the government of a program country.

(C) WAIVER.—The Secretary of Homeland Security may waive the application of subparagraph (A) to an alien if the Secretary determines that such a waiver is in the law enforcement or national security interests of the United States.

(D) COUNTRIES OR AREAS OF CONCERN.—

(i) IN GENERAL.—Not later than 60 days after the date of the enactment of this paragraph, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, shall determine whether the requirement under subparagraph (A) shall apply to any other country or area.

(ii) CRITERIA.—In making a determination under clause (i), the Secretary shall consider—

(I) whether the presence of an alien in the country or area increases the likelihood that the alien is a credible threat to the national security of the United States;

(II) whether a foreign terrorist organization has a significant presence in the country or area; and

(III) whether the country or area is a safe haven for terrorists.

(iii) ANNUAL REVIEW.—The Secretary shall conduct a review, on an annual basis, of any determination made under clause (i).

(E) REPORT.—Beginning not later than one year after the date of the enactment of this paragraph, and annually thereafter, the Secretary of Homeland Security shall submit to the Committee on Homeland Security, the Committee on Foreign Affairs, the Permanent Select Com-

mittee on Intelligence, and the Committee on the Judiciary of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs, the Committee on Foreign Relations, the Select Committee on Intelligence, and the Committee on the Judiciary of the Senate a report on each instance in which the Secretary exercised the waiver authority under subparagraph (C) during the previous year.

(b) **WAIVER OF RIGHTS.**—An alien may not be provided a waiver under the program unless the alien has waived any right—

(1) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

(2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

(c) **DESIGNATION OF PROGRAM COUNTRIES.**—

(1) **IN GENERAL.**—The Secretary of Homeland Security, in consultation with the Secretary of State, may designate any country as a program country if it meets the requirements of paragraph (2).

(2) **QUALIFICATIONS.**—Except as provided in subsection (f), a country may not be designated as a program country unless the following requirements are met:

(A) **LOW NONIMMIGRANT VISA REFUSAL RATE.**—Either—

(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during—

(I) the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years; and

(II) either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year; or

(ii) such refusal rate for nationals of that country during the previous full fiscal year was less than 3.0 percent.

(B) **PASSPORT PROGRAM.**—

(i) **ISSUANCE OF PASSPORTS.**—The government of the country certifies that it issues to its citizens passports described in subparagraph (A) of subsection (a)(3), and on or after April 1, 2016, passports described in subparagraph (B) of subsection (a)(3).

(ii) **VALIDATION OF PASSPORTS.**—Not later than October 1, 2016, the government of the country certifies that it has in place mechanisms to validate passports described in subparagraphs (A) and (B) of subsection (a)(3) at each key port of entry into that country. This requirement shall not apply to travel between countries which fall within the Schengen Zone.

(C) **LAW ENFORCEMENT AND SECURITY INTERESTS.**—The Secretary of Homeland Security, in consultation with the Secretary of State—

(i) evaluates the effect that the country's designation would have on the law enforcement and security interests of the United States (including the interest in enforcement of the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(ii) determines that such interests would not be compromised by the designation of the country; and

(iii) submits a written report to the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Homeland Security of the House of Representatives and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate regarding the country's qualification for designation that includes an explanation of such determination.

(D) REPORTING LOST AND STOLEN PASSPORTS.—The government of the country enters into an agreement with the United States to report, or make available through Interpol or other means as designated by the Secretary of Homeland Security, to the United States Government information about the theft or loss of passports not later than 24 hours after becoming aware of the theft or loss and in a manner specified in the agreement.

(E) REPATRIATION OF ALIENS.—The government of the country accepts for repatriation any citizen, former citizen, or national of the country against whom a final executable order of removal is issued not later than three weeks after the issuance of the final order of removal. Nothing in this subparagraph creates any duty for the United States or any right for any alien with respect to removal or release. Nothing in this subparagraph gives rise to any cause of action or claim under this paragraph or any other law against any official of the United States or of any State to compel the release, removal, or consideration for release or removal of any alien.

(F) PASSENGER INFORMATION EXCHANGE.—The government of the country enters into an agreement with the United States to share information regarding whether citizens and nationals of that country traveling to the United States represent a threat to the security or welfare of the United States or its citizens, and fully implements such agreement.

(G) INTERPOL SCREENING.—Not later than 270 days after the date of the enactment of this subparagraph, except in the case of a country in which there is not an international airport, the government of the country certifies to the Secretary of Homeland Security that, to the maximum extent allowed under the laws of the country, it is screening, for unlawful activity, each person who is not a citizen or national of that country who is admitted to or departs that country, by using relevant databases and notices main-

tained by Interpol, or other means designated by the Secretary of Homeland Security. This requirement shall not apply to travel between countries which fall within the Schengen Zone.

(3) CONTINUING AND SUBSEQUENT QUALIFICATIONS.—For each fiscal year after the initial period—

(A) CONTINUING QUALIFICATION.—In the case of a country which was a program country in the previous fiscal year, a country may not be designated as a program country unless the sum of—

(i) the total of the number of nationals of that country who were denied admission at the time of arrival or withdrew their application for admission during such previous fiscal year as a nonimmigrant visitor, and

(ii) the total number of nationals of that country who were admitted as nonimmigrant visitors during such previous fiscal year and who violated the terms of such admission,

was less than 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

(B) NEW COUNTRIES.—In the case of another country, the country may not be designated as a program country unless the following requirements are met:

(i) LOW NONIMMIGRANT VISA REFUSAL RATE IN PREVIOUS 2-YEAR PERIOD.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during the two previous full fiscal years was less than 2 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years.

(ii) LOW NONIMMIGRANT VISA REFUSAL RATE IN EACH OF THE 2 PREVIOUS YEARS.—The average number of refusals of nonimmigrant visitor visas for nationals of that country during either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year.

(4) INITIAL PERIOD.—For purposes of paragraphs (2) and (3), the term “initial period” means the period beginning at the end of the 30-day period described in subsection (b)(1) and ending on the last day of the first fiscal year which begins after such 30-day period.

(5) WRITTEN REPORTS ON CONTINUING QUALIFICATION; DESIGNATION TERMINATIONS.—

(A) PERIODIC EVALUATIONS.—

(i) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of State, periodically (but not less than once every 2 years)—

(I) shall evaluate the effect of each program country’s continued designation on the law enforcement and security interests of the United States (including the interest in enforcement of

the immigration laws of the United States and the existence and effectiveness of its agreements and procedures for extraditing to the United States individuals, including its own nationals, who commit crimes that violate United States law);

(II) shall determine, based upon the evaluation in subclause (I), whether any such designation ought to be continued or terminated under subsection (d);

(III) shall submit a written report to the Committee on the Judiciary, the Committee on Foreign Affairs, the Permanent Select Committee on Intelligence, and the Committee on Homeland Security, of the House of Representatives and the Committee on the Judiciary, the Committee on Foreign Relations, the Select Committee on Intelligence and the Committee on Homeland Security and Governmental Affairs of the Senate regarding the continuation or termination of the country's designation that includes an explanation of such determination and the effects described in subclause (I);

(IV) shall submit to Congress a report regarding the implementation of the electronic system for travel authorization under subsection (h)(3) and the participation of new countries in the program through a waiver under paragraph (8); and

(V) shall submit to the committees described in subclause (III), a report that includes an assessment of the threat to the national security of the United States of the designation of each country designated as a program country, including the compliance of the government of each such country with the requirements under subparagraphs (D) and (F) of paragraph (2), as well as each such government's capacity to comply with such requirements.

(ii) **EFFECTIVE DATE.**—A termination of the designation of a country under this subparagraph shall take effect on the date determined by the Secretary of Homeland Security, in consultation with the Secretary of State.

(iii) **REDESIGNATION.**—In the case of a termination under this subparagraph, the Secretary of Homeland Security shall redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that all causes of the termination have been eliminated.

(B) **EMERGENCY TERMINATION.**—

(i) **IN GENERAL.**—In the case of a program country in which an emergency occurs 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 (including the interest in enforcement of the immigration laws of the United States), the Secretary of Homeland Security shall immediately terminate the designation of the country as a program country.

(ii) DEFINITION.—For purposes of clause (i), the term “emergency” means—

(I) the overthrow of a democratically elected government;

(II) war (including undeclared war, civil war, or other military activity) on the territory of the program country;

(III) a severe breakdown in law and order affecting a significant portion of the program country’s territory;

(IV) a severe economic collapse in the program country; or

(V) any other extraordinary event in the program country that threatens the law enforcement or security interests of the United States (including the interest in enforcement of the immigration laws of the United States) and where the country’s participation in the program could contribute to that threat.

(iii) REDESIGNATION.—The Secretary of Homeland Security may redesignate the country as a program country, without regard to subsection (f) or paragraph (2) or (3), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that—

(I) at least 6 months have elapsed since the effective date of the termination;

(II) the emergency that caused the termination has ended; and

(III) the average number of refusals of nonimmigrant visitor visas for nationals of that country during the period of termination under this subparagraph was less than 3.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during such period.

(iv) PROGRAM SUSPENSION AUTHORITY.—The Director of National Intelligence shall immediately inform the Secretary of Homeland Security of any current and credible threat which poses an imminent danger to the United States or its citizens and originates from a country participating in the visa waiver program. Upon receiving such notification, the Secretary, in consultation with the Secretary of State—

(I) may suspend a country from the visa waiver program without prior notice;

(II) shall notify any country suspended under subclause (I) and, to the extent practicable without disclosing sensitive intelligence sources and

methods, provide justification for the suspension; and

(III) shall restore the suspended country's participation in the visa waiver program upon a determination that the threat no longer poses an imminent danger to the United States or its citizens.

(C) TREATMENT OF NATIONALS AFTER TERMINATION.—For purposes of this paragraph—

(i) nationals of a country whose designation is terminated under subparagraph (A) or (B) shall remain eligible for a waiver under subsection (a) until the effective date of such termination; and

(ii) a waiver under this section that is provided to such a national for a period described in subsection (a)(1) shall not, by such termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.

(6) COMPUTATION OF VISA REFUSAL RATES.—For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, or disability, unless otherwise specifically authorized by law or regulation. No court shall have jurisdiction under this paragraph to review any visa refusal, the denial of admission to the United States of any alien by the Secretary of Homeland Security, the Secretary's computation of the visa refusal rate, or the designation or nondesignation of any country.

(7) VISA WAIVER INFORMATION.—

(A) IN GENERAL.—In refusing the application of nationals of a program country for United States visas, or the applications of nationals of a country seeking entry into the visa waiver program, a consular officer shall not knowingly or intentionally classify the refusal of the visa under a category that is not included in the calculation of the visa refusal rate only so that the percentage of that country's visa refusals is less than the percentage limitation applicable to qualification for participation in the visa waiver program.

(B) REPORTING REQUIREMENT.—On May 1 of each year, for each country under consideration for inclusion in the visa waiver program, the Secretary of State shall provide to the appropriate congressional committees—

(i) the total number of nationals of that country that applied for United States visas in that country during the previous calendar year;

(ii) the total number of such nationals who received United States visas during the previous calendar year;

(iii) the total number of such nationals who were refused United States visas during the previous calendar year;

(iv) the total number of such nationals who were refused United States visas during the previous calendar year under each provision of this Act under which the visas were refused; and

(v) the number of such nationals that were refused under section 214(b) as a percentage of the visas that were issued to such nationals.

(C) CERTIFICATION.—Not later than May 1 of each year, the United States chief of mission, acting or permanent, to each country under consideration for inclusion in the visa waiver program shall certify to the appropriate congressional committees that the information described in subparagraph (B) is accurate and provide a copy of that certification to those committees.

(D) CONSIDERATION OF COUNTRIES IN THE VISA WAIVER PROGRAM.—Upon notification to the Secretary of Homeland Security that a country is under consideration for inclusion in the visa waiver program, the Secretary of State shall provide all of the information described in subparagraph (B) to the Secretary of Homeland Security.

(E) DEFINITION.—In this paragraph, the term “appropriate congressional committees” means the Committee on the Judiciary and the Committee on Foreign Relations of the Senate and the Committee on the Judiciary and the Committee on International Relations of the House of Representatives.

(8) NONIMMIGRANT VISA REFUSAL RATE FLEXIBILITY.—

(A) CERTIFICATION.—

(i) IN GENERAL.—On the date on which an air exit system is in place that can verify the departure of not less than 97 percent of foreign nationals who exit through airports of the United States and the electronic system for travel authorization required under subsection (h)(3) is fully operational, the Secretary of Homeland Security shall certify to Congress that such air exit system and electronic system for travel authorization are in place.

(ii) NOTIFICATION TO CONGRESS.—The Secretary shall notify Congress in writing of the date on which the air exit system under clause (i) fully satisfies the biometric requirements specified in subsection (i).

(iii) TEMPORARY SUSPENSION OF WAIVER AUTHORITY.—Notwithstanding any certification made under clause (i), if the Secretary has not notified Congress in accordance with clause (ii) by June 30, 2009, the Secretary’s waiver authority under subparagraph (B) shall be suspended beginning on July 1, 2009, until such time as the Secretary makes such notification.

(iv) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed as in any way abrogating the reporting requirements under subsection (i)(3).

(B) WAIVER.—After certification by the Secretary under subparagraph (A), the Secretary, in consultation with the Secretary of State, may waive the application of paragraph (2)(A) for a country if—

(i) the country meets all security requirements of this section;

(ii) the Secretary of Homeland Security determines that the totality of the country’s security risk mitiga-

tion measures provide assurance that the country's participation in the program would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States;

(iii) there has been a sustained reduction in the rate of refusals for nonimmigrant visas for nationals of the country and conditions exist to continue such reduction;

(iv) the country cooperated with the Government of the United States on counterterrorism initiatives, information sharing, and preventing terrorist travel before the date of its designation as a program country, and the Secretary of Homeland Security and the Secretary of State determine that such cooperation will continue; and

(v)(I) the rate of refusals for nonimmigrant visitor visas for nationals of the country during the previous full fiscal year was not more than ten percent; or

(II) the visa overstay rate for the country for the previous full fiscal year does not exceed the maximum visa overstay rate, once such rate is established under subparagraph (C).

(C) MAXIMUM VISA OVERSTAY RATE.—

(i) REQUIREMENT TO ESTABLISH.—After certification by the Secretary under subparagraph (A), the Secretary and the Secretary of State jointly shall use information from the air exit system referred to in such subparagraph to establish a maximum visa overstay rate for countries participating in the program pursuant to a waiver under subparagraph (B). The Secretary of Homeland Security shall certify to Congress that such rate would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States.

(ii) VISA OVERSTAY RATE DEFINED.—In this paragraph the term “visa overstay rate” means, with respect to a country, the ratio of—

(I) the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa whose periods of authorized stays ended during a fiscal year but who remained unlawfully in the United States beyond such periods; to

(II) the total number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa during that fiscal year.

(iii) REPORT AND PUBLICATION.—The Secretary of Homeland Security shall on the same date submit to Congress and publish in the Federal Register information relating to the maximum visa overstay rate established under clause (i). Not later than 60 days after such date, the Secretary shall issue a final maximum visa overstay rate above which a country may not participate in the program.

(9) DISCRETIONARY SECURITY-RELATED CONSIDERATIONS.—In determining whether to waive the application of paragraph (2)(A) for a country, pursuant to paragraph (8), the Secretary of Homeland Security, in consultation with the Secretary of State, shall take into consideration other factors affecting the security of the United States, including—

(A) airport security standards in the country;

(B) whether the country assists in the operation of an effective air marshal program;

(C) the standards of passports and travel documents issued by the country; and

(D) other security-related factors, including the country's cooperation with the United States' initiatives toward combating terrorism and the country's cooperation with the United States intelligence community in sharing information regarding terrorist threats.

(10) TECHNICAL ASSISTANCE.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall provide technical assistance to program countries to assist those countries in meeting the requirements under this section. The Secretary of Homeland Security shall ensure that the program office within the Department of Homeland Security is adequately staffed and has resources to be able to provide such technical assistance, in addition to its duties to effectively monitor compliance of the countries participating in the program with all the requirements of the program.

(11) INDEPENDENT REVIEW.—

(A) IN GENERAL.—Prior to the admission of a new country into the program under this section, and in conjunction with the periodic evaluations required under subsection (c)(5)(A), the Director of National Intelligence shall conduct an independent intelligence assessment of a nominated country and member of the program.

(B) REPORTING REQUIREMENT.—The Director shall provide to the Secretary of Homeland Security, the Secretary of State, and the Attorney General the independent intelligence assessment required under subparagraph (A).

(C) CONTENTS.—The independent intelligence assessment conducted by the Director shall include—

(i) a review of all current, credible terrorist threats of the subject country;

(ii) an evaluation of the subject country's counterterrorism efforts;

(iii) an evaluation as to the extent of the country's sharing of information beneficial to suppressing terrorist movements, financing, or actions;

(iv) an assessment of the risks associated with including the subject country in the program; and

(v) recommendations to mitigate the risks identified in clause (iv).

(12) DESIGNATION OF HIGH RISK PROGRAM COUNTRIES.—

(A) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Director of National Intelligence and the Secretary of State, shall evaluate program countries on an annual basis based on the criteria described in

subparagraph (B) and shall identify any program country, the admission of nationals from which under the visa waiver program under this section, the Secretary determines presents a high risk to the national security of the United States.

(B) CRITERIA.—In evaluating program countries under subparagraph (A), the Secretary of Homeland Security, in consultation with the Director of National Intelligence and the Secretary of State, shall consider the following criteria:

(i) The number of nationals of the country determined to be ineligible to travel to the United States under the program during the previous year.

(ii) The number of nationals of the country who were identified in United States Government databases related to the identities of known or suspected terrorists during the previous year.

(iii) The estimated number of nationals of the country who have traveled to Iraq or Syria at any time on or after March 1, 2011 to engage in terrorism.

(iv) The capacity of the country to combat passport fraud.

(v) The level of cooperation of the country with the counter-terrorism efforts of the United States.

(vi) The adequacy of the border and immigration control of the country.

(vii) Any other criteria the Secretary of Homeland Security determines to be appropriate.

(C) SUSPENSION OF DESIGNATION.—The Secretary of Homeland Security, in consultation with the Secretary of State, may suspend the designation of a program country based on a determination that the country presents a high risk to the national security of the United States under subparagraph (A) until such time as the Secretary determines that the country no longer presents such a risk.

(D) REPORT.—Not later than 60 days after the date of the enactment of this paragraph, and annually thereafter, the Secretary of Homeland Security, in consultation with the Director of National Intelligence and the Secretary of State, shall submit to the Committee on Homeland Security, the Committee on Foreign Affairs, the Permanent Select Committee on Intelligence, and the Committee on the Judiciary of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs, the Committee on Foreign Relations, the Select Committee on Intelligence, and the Committee on the Judiciary of the Senate a report, which includes an evaluation and threat assessment of each country determined to present a high risk to the national security of the United States under subparagraph (A).

(d) AUTHORITY.—Notwithstanding any other provision of this section, the Secretary of Homeland Security, in consultation with the Secretary of State, may for any reason (including national security) refrain from waiving the visa requirement in respect to nationals of any country which may otherwise qualify for designation or may, at any time, rescind any waiver or designation previously granted

under this section. The Secretary of Homeland Security may not waive any eligibility requirement under this section unless the Secretary notifies, with respect to the House of Representatives, the Committee on Homeland Security, the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Appropriations, and with respect to the Senate, the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Appropriations not later than 30 days before the effective date of such waiver.

(e) CARRIER AGREEMENTS.—

(1) IN GENERAL.—The agreement referred to in subsection (a)(4) is an agreement between a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title and the Secretary of Homeland Security under which the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title agrees, in consideration of the waiver of the visa requirement with respect to a nonimmigrant visitor under the program—

(A) to indemnify the United States against any costs for the transportation of the alien from the United States if the visitor is refused admission to the United States or remains in the United States unlawfully after the 90-day period described in subsection (a)(1)(A),

(B) to submit daily to immigration officers any immigration forms received with respect to nonimmigrant visitors provided a waiver under the program,

(C) to be subject to the imposition of fines resulting from the transporting into the United States of a national of a designated country without a passport pursuant to regulations promulgated by the Secretary of Homeland Security, and

(D) to collect, provide, and share passenger data as required under subsection (h)(1)(B).

(2) TERMINATION OF AGREEMENTS.—The Secretary of Homeland Security may terminate an agreement under paragraph (1) with five days' notice to the carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title for the failure by a carrier (including any carrier conducting operations under part 135 of title 14, Code of Federal Regulations) or a domestic corporation conducting operations under part 91 of that title to meet the terms of such agreement.

(3) BUSINESS AIRCRAFT REQUIREMENTS.—

(A) IN GENERAL.—For purposes of this section, a domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations that owns or operates a noncommercial aircraft is a corporation that is organized under the laws of any of the States of the United States or the District of Columbia and is accredited by or a member of a national organization that sets business aviation

standards. The Secretary of Homeland Security shall prescribe by regulation the provision of such information as the Secretary of Homeland Security deems necessary to identify the domestic corporation, its officers, employees, shareholders, its place of business, and its business activities.

(B) COLLECTIONS.—In addition to any other fee authorized by law, the Secretary of Homeland Security is authorized to charge and collect, on a periodic basis, an amount from each domestic corporation conducting operations under part 91 of title 14, Code of Federal Regulations, for nonimmigrant visa waiver admissions on noncommercial aircraft owned or operated by such domestic corporation equal to the total amount of fees assessed for issuance of nonimmigrant visa waiver arrival/departure forms at land border ports of entry. All fees collected under this paragraph shall be deposited into the Immigration User Fee Account established under section 286(h).

(f) DURATION AND TERMINATION OF DESIGNATION.—

(1) IN GENERAL.—

(A) DETERMINATION AND NOTIFICATION OF DISQUALIFICATION RATE.—Upon determination by the Secretary of Homeland Security that a program country's disqualification rate is 2 percent or more, the Secretary of Homeland Security shall notify the Secretary of State.

(B) PROBATIONARY STATUS.—If the program country's disqualification rate is greater than 2 percent but less than 3.5 percent, the Secretary of Homeland Security shall place the program country in probationary status for a period not to exceed 2 full fiscal years following the year in which the determination under subparagraph (A) is made.

(C) TERMINATION OF DESIGNATION.—Subject to paragraph (3), if the program country's disqualification rate is 3.5 percent or more, the Secretary of Homeland Security shall terminate the country's designation as a program country effective at the beginning of the second fiscal year following the fiscal year in which the determination under subparagraph (A) is made.

(2) TERMINATION OF PROBATIONARY STATUS.—

(A) IN GENERAL.—If the Secretary of Homeland Security determines at the end of the probationary period described in paragraph (1)(B) that the program country placed in probationary status under such paragraph has failed to develop a machine-readable passport program as required by section (c)(2)(C), or has a disqualification rate of 2 percent or more, the Secretary of Homeland Security shall terminate the designation of the country as a program country. If the Secretary of Homeland Security determines that the program country has developed a machine-readable passport program and has a disqualification rate of less than 2 percent, the Secretary of Homeland Security shall redesignate the country as a program country.

(B) EFFECTIVE DATE.—A termination of the designation of a country under subparagraph (A) shall take effect on the first day of the first fiscal year following the fiscal year

in which the determination under such subparagraph is made. Until such date, nationals of the country shall remain eligible for a waiver under subsection (a).

(3) NONAPPLICABILITY OF CERTAIN PROVISIONS.—Paragraph (1)(C) shall not apply unless the total number of nationals of a program country described in paragraph (4)(A) exceeds 100.

(4) DEFINITION.—For purposes of this subsection, the term “disqualification rate” means the percentage which—

(A) the total number of nationals of the program country who were—

(i) denied admission at the time of arrival or withdrew their application for admission during the most recent fiscal year for which data are available; and

(ii) admitted as nonimmigrant visitors during such fiscal year and who violated the terms of such admission; bears to

(B) the total number of nationals of such country who applied for admission as nonimmigrant visitors during such fiscal year.

(5) FAILURE TO REPORT PASSPORT THEFTS.—If the Secretary of Homeland Security and the Secretary of State jointly determine that the program country is not reporting the theft or loss of passports, as required by subsection (c)(2)(D), the Secretary of Homeland Security shall terminate the designation of the country as a program country.

(6) FAILURE TO SHARE INFORMATION.—

(A) IN GENERAL.—If the Secretary of Homeland Security and the Secretary of State jointly determine that the program country is not sharing information, as required by subsection (c)(2)(F), the Secretary of Homeland Security shall terminate the designation of the country as a program country.

(B) REDESIGNATION.—In the case of a termination under this paragraph, the Secretary of Homeland Security shall redesignate the country as a program country, without regard to paragraph (2) or (3) of subsection (c) or paragraphs (1) through (4), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines that the country is sharing information, as required by subsection (c)(2)(F).

(7) FAILURE TO SCREEN.—

(A) IN GENERAL.—Beginning on the date that is 270 days after the date of the enactment of this paragraph, if the Secretary of Homeland Security and the Secretary of State jointly determine that the program country is not conducting the screening required by subsection (c)(2)(G), the Secretary of Homeland Security shall terminate the designation of the country as a program country.

(B) REDESIGNATION.—In the case of a termination under this paragraph, the Secretary of Homeland Security shall redesignate the country as a program country, without regard to paragraph (2) or (3) of subsection (c) or paragraphs (1) through (4), when the Secretary of Homeland Security, in consultation with the Secretary of State, determines

that the country is conducting the screening required by subsection (c)(2)(G).

(g) VISA APPLICATION SOLE METHOD TO DISPUTE DENIAL OF WAIVER BASED ON A GROUND OF INADMISSIBILITY.—In the case of an alien denied a waiver under the program by reason of a ground of inadmissibility described in section 212(a) that is discovered at the time of the alien's application for the waiver or through the use of an automated electronic database required under subsection (a)(9), the alien may apply for a visa at an appropriate consular office outside the United States. There shall be no other means of administrative or judicial review of such a denial, and no court or person otherwise shall have jurisdiction to consider any claim attacking the validity of such a denial.

(h) USE OF INFORMATION TECHNOLOGY SYSTEMS.—

(1) AUTOMATED ENTRY-EXIT CONTROL SYSTEM.—

(A) SYSTEM.—Not later than October 1, 2001, the Secretary of Homeland Security shall develop and implement a fully automated entry and exit control system that will collect a record of arrival and departure for every alien who arrives and departs by sea or air at a port of entry into the United States and is provided a waiver under the program.

(B) REQUIREMENTS.—The system under subparagraph

(A) shall satisfy the following requirements:

(i) DATA COLLECTION BY CARRIERS.—Not later than October 1, 2001, the records of arrival and departure described in subparagraph (A) shall be based, to the maximum extent practicable, on passenger data collected and electronically transmitted to the automated entry and exit control system by each carrier that has an agreement under subsection (a)(4).

(ii) DATA PROVISION BY CARRIERS.—Not later than October 1, 2002, no waiver may be provided under this section to an alien arriving by sea or air at a port of entry into the United States on a carrier unless the carrier is electronically transmitting to the automated entry and exit control system passenger data determined by the Secretary of Homeland Security to be sufficient to permit the Secretary of Homeland Security to carry out this paragraph.

(iii) CALCULATION.—The system shall contain sufficient data to permit the Secretary of Homeland Security to calculate, for each program country and each fiscal year, the portion of nationals of that country who are described in subparagraph (A) and for whom no record of departure exists, expressed as a percentage of the total number of such nationals who are so described.

(C) REPORTING.—

(i) PERCENTAGE OF NATIONALS LACKING DEPARTURE RECORD.—As part of the annual report required to be submitted under section 110(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Secretary of Homeland Security shall include a section containing the calculation described in

subparagraph (B)(iii) for each program country for the previous fiscal year, together with an analysis of that information.

(ii) SYSTEM EFFECTIVENESS.—Not later than December 31, 2004, the Secretary of Homeland Security shall submit a written report to the Committee on the Judiciary of the United States House of Representatives and of the Senate containing the following:

(I) The conclusions of the Secretary of Homeland Security regarding the effectiveness of the automated entry and exit control system to be developed and implemented under this paragraph.

(II) The recommendations of the Secretary of Homeland Security regarding the use of the calculation described in subparagraph (B)(iii) as a basis for evaluating whether to terminate or continue the designation of a country as a program country.

The report required by this clause may be combined with the annual report required to be submitted on that date under section 110(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

(2) AUTOMATED DATA SHARING SYSTEM.—

(A) SYSTEM.—The Secretary of Homeland Security and the Secretary of State shall develop and implement an automated data sharing system that will permit them to share data in electronic form from their respective records systems regarding the admissibility of aliens who are nationals of a program country.

(B) REQUIREMENTS.—The system under subparagraph

(A) shall satisfy the following requirements:

(i) SUPPLYING INFORMATION TO IMMIGRATION OFFICERS CONDUCTING INSPECTIONS AT PORTS OF ENTRY.—Not later than October 1, 2002, the system shall enable immigration officers conducting inspections at ports of entry under section 235 to obtain from the system, with respect to aliens seeking a waiver under the program—

(I) any photograph of the alien that may be contained in the records of the Department of State or the Service; and

(II) information on whether the alien has ever been determined to be ineligible to receive a visa or ineligible to be admitted to the United States.

(ii) SUPPLYING PHOTOGRAPHS OF INADMISSIBLE ALIENS.—The system shall permit the Secretary of Homeland Security electronically to obtain any photograph contained in the records of the Secretary of State pertaining to an alien who is a national of a program country and has been determined to be ineligible to receive a visa.

(iii) MAINTAINING RECORDS ON APPLICATIONS FOR ADMISSION.—The system shall maintain, for a minimum of 10 years, information about each application for ad-

mission made by an alien seeking a waiver under the program, including the following:

(I) The name or Service identification number of each immigration officer conducting the inspection of the alien at the port of entry.

(II) Any information described in clause (i) that is obtained from the system by any such officer.

(III) The results of the application.

(3) ELECTRONIC SYSTEM FOR TRAVEL AUTHORIZATION.—

(A) SYSTEM.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a fully automated electronic system for travel authorization (referred to in this paragraph as the “System”) to collect such biographical and other information as the Secretary of Homeland Security determines necessary to determine, in advance of travel, the eligibility of, and whether there exists a law enforcement or security risk in permitting, the alien to travel to the United States.

(B) FEES.—

(i) IN GENERAL.—No later than 6 months after the date of enactment of the Travel Promotion Act of 2009, the Secretary of Homeland Security shall establish a fee for the use of the System and begin assessment and collection of that fee. The initial fee shall be the sum of—

(I) ~~[\$10]~~ \$17 per travel authorization; and

(II) an amount that will at least ensure recovery of the full costs of providing and administering the System, as determined by the Secretary.

(ii) DISPOSITION OF AMOUNTS COLLECTED.—Amounts collected under clause (i)(I) shall be credited to the Travel Promotion Fund established by subsection (d) of the Travel Promotion Act of 2009 (22 U.S.C. 2131(d)). Amounts collected under clause (i)(II) shall be transferred to the general fund of the Treasury and made available to pay the costs incurred to administer the System.

(iii) SUNSET OF TRAVEL PROMOTION FUND FEE.—The Secretary may not collect the fee authorized by clause (i)(I) for fiscal years beginning after September 30, 2027.

(C) VALIDITY.—

(i) PERIOD.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall prescribe regulations that provide for a period, not to exceed three years, during which a determination of eligibility to travel under the program will be valid. Notwithstanding any other provision under this section, the Secretary of Homeland Security may revoke any such determination or shorten the period of eligibility under any such determination at any time and for any reason.

(ii) LIMITATION.—A determination by the Secretary of Homeland Security that an alien is eligible to travel to the United States under the program is not a deter-

mination that the alien is admissible to the United States.

(iii) NOT A DETERMINATION OF VISA ELIGIBILITY.—A determination by the Secretary of Homeland Security that an alien who applied for authorization to travel to the United States through the System is not eligible to travel under the program is not a determination of eligibility for a visa to travel to the United States and shall not preclude the alien from applying for a visa.

(iv) JUDICIAL REVIEW.—Notwithstanding any other provision of law, no court shall have jurisdiction to review an eligibility determination under the System.

(D) FRAUD DETECTION.—The Secretary of Homeland Security shall research opportunities to incorporate into the System technology that will detect and prevent fraud and deception in the System.

(E) ADDITIONAL AND PREVIOUS COUNTRIES OF CITIZENSHIP.—The Secretary of Homeland Security shall collect from an applicant for admission pursuant to this section information on any additional or previous countries of citizenship of that applicant. The Secretary shall take any information so collected into account when making determinations as to the eligibility of the alien for admission pursuant to this section.

(F) REPORT ON CERTAIN LIMITATIONS ON TRAVEL.—Not later than 30 days after the date of the enactment of this subparagraph and annually thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the Committee on Homeland Security, the Committee on the Judiciary, and the Committee on Foreign Affairs of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs, the Committee on the Judiciary, and the Committee on Foreign Relations of the Senate a report on the number of individuals who were denied eligibility to travel under the program, or whose eligibility for such travel was revoked during the previous year, and the number of such individuals determined, in accordance with subsection (a)(6), to represent a threat to the national security of the United States, and shall include the country or countries of citizenship of each such individual.

(i) EXIT SYSTEM.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this subsection, the Secretary of Homeland Security shall establish an exit system that records the departure on a flight leaving the United States of every alien participating in the visa waiver program established under this section.

(2) SYSTEM REQUIREMENTS.—The system established under paragraph (1) shall—

(A) match biometric information of the alien against relevant watch lists and immigration information; and

(B) compare such biometric information against manifest information collected by air carriers on passengers depart-

ing the United States to confirm such aliens have departed the United States.

(3) REPORT.—Not later than 180 days after the date of the enactment of this subsection, the Secretary shall submit to Congress a report that describes—

(A) the progress made in developing and deploying the exit system established under this subsection; and

(B) the procedures by which the Secretary shall improve the method of calculating the rates of nonimmigrants who overstay their authorized period of stay in the United States.

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