
TABLE OF CONTENTS

INTRODUCTION	1
PURPOSE	1
BACKGROUND	1
SCOPE AND METHODOLOGY	3
RESULTS OF THE REVIEW	5
STATUS OF OIG RECOMMENDATIONS FROM 1997 REPORT	5
Recommendation 1	5
Recommendation 2	7
Recommendations 3 and 4	9
CONCLUSION	12

INTRODUCTION

Purpose

In 1997, the Office of the Inspector General (OIG) issued an inspection report, Immigration and Naturalization Service Monitoring of Nonimmigrant Overstays (Report Number I-97-08), which assessed the Immigration and Naturalization Service's (INS) monitoring of nonimmigrant visitors who stay in the United States beyond the period of time permitted by their status at entry (overstays). The report also examined the INS's Nonimmigrant Information System (NIIS), its principal database for identifying overstays. In the report, we found that the INS often could not conclusively identify individual nonimmigrant overstays, that the INS could not adequately describe the characteristics of the overstay population in the United States, and that the INS did not have an enforcement strategy that effectively targeted overstays. Furthermore, we determined that NIIS was not producing reliable overstay data, either in the aggregate or for individual nonimmigrants.

The original OIG report made recommendations to improve the collection and analysis of available data on overstays, to improve the reliability of NIIS data, and to develop an effective enforcement strategy targeted at overstays. In the wake of the September 11 terrorist attacks, the OIG conducted several follow-up reviews of prior OIG reports to determine what progress the INS had made to address the recommendations in those reports. This follow-up review, which is the fifth in the series of follow-up reports,¹ evaluated the INS's progress in implementing the recommendations from our 1997 report on the INS's monitoring of nonimmigrant overstays.

Background

The INS inspected over 35 million nonimmigrants at approximately 133 air ports of entry (POE), approximately 1 million at sea POEs, and an additional 195 million nonimmigrants at land POEs in fiscal year (FY) 2001. The INS regularly collects information to evaluate the effectiveness of its enforcement of immigration laws, including nonimmigrants' status at admission to the United States and the duration of their stay in this country.

¹ The four reports already issued are "Follow-Up Report on the Visa Waiver Program (December 2001)," "Status of IDENT/IAFIS Integration (December 2001)," "Follow-Up Report on Improving the Security of the Transit Without Visa Program (December 2001)," and "Follow-Up Report on the Border Patrol's Efforts to Improve Security Along the Northern Border (February 2002)."

NIIS is the INS's primary information system to track whether nonimmigrants have entered or left the United States. The INS Form I-94, Arrival/Departure Record, is the primary source of information entered into NIIS. Form I-94 is divided into two parts – an arrival portion that includes the nonimmigrant's name, date of birth, passport number, airline, flight number, country of citizenship, and address while in the United States, and a departure portion that includes the alien's name, date of birth, and country of citizenship. Each Form I-94 contains a unique admission number printed on both portions that the INS uses to record and match the arrival and departure records of nonimmigrants. The INS furnishes the Form I-94 to the airlines to give to nonimmigrants to complete. Upon arrival at a POE, the nonimmigrants present the form to immigration inspectors for review at the same time they present their passports or other travel documents. The immigration inspectors retain the arrival portions of the Form I-94 and the nonimmigrants retain the departure portions. The departure portions are supposed to be collected by representatives of the airlines and turned over to the INS upon the nonimmigrants' departure from the air POE. The INS forwards both the arrival and departure portions to contractors who enter the information from the forms into NIIS.

NIIS captures data on only about 15 percent of all nonimmigrant entries into the United States, primarily aliens entering through air and sea POEs and some aliens entering through land POEs. Canadians and Mexicans crossing at land POEs, who constitute 85 percent of nonimmigrant entries, are generally exempt from the Form I-94 requirements.

The INS estimates the current illegal alien population to be approximately 7 million.² The common perception that the vast majority of illegal aliens entered the United States by surreptitiously crossing the southwest or northern border is inaccurate. INS officials have testified before Congress that 40 to 50 percent of the illegal alien population entered the United States legally as temporary visitors but failed to depart when required. The INS commonly refers to these illegal aliens as nonimmigrant overstays, and according to the INS this population is growing by at least 125,000 a year.

In 1996, Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) directed the INS to develop an automated entry-exit

² Data from the 2000 Census suggests the number may be at least 8 million. Scholars at Boston's Northeastern University estimated the number as close to 13 million in a February 2001 study, [An Analysis of the Preliminary 2000 Census Estimates of the Resident Population of the U.S. and Their Implications for Demographic, Immigration, and Labor Market Analysis and Policymaking.](#)

tracking system that collects a record of departure for every alien and matches it with a record of the alien's arrival. The system also was required to have an on-line capability to identify nonimmigrant overstays and produce reports of the results of the matching by country. This overstay information was to be integrated into databases of the INS and the Department of State, including those used at POEs and at consular offices.

However, the Canadian government and some northern border members of Congress opposed the entry-exit system requirement on grounds that it would adversely affect the movement of goods and people across the northern border. In 1998, Congress amended Section 110 to state that the system should not significantly disrupt trade, tourism, or other legitimate cross-border traffic at land POEs. In June 2000, the Data Management Improvement Act (DMIA), Public Law 106-215, further amended Section 110 to bar the imposition of any new documentary or data collection requirements to satisfy the requirements of Section 110, including requirements on aliens for whom documentary requirements have been waived (i.e., Canadians), or requirements that are inconsistent with the North American Free Trade Agreement. The amended Section 110 set the following deadlines for development of the entry-exit system: December 31, 2003, for airport and seaport POEs; December 31, 2004, for the 50 high-traffic land border POEs; and December 31, 2005, for the remaining POEs.

After the terrorist attacks of September 11, 2001, the effectiveness of monitoring nonimmigrant visitors came under additional scrutiny, as authorities considered how to identify and locate terrorists who might be in the United States. The USA Patriot Act of 2001, enacted on October 26, 2001, requires that the integrated entry-exit control system be implemented with all deliberate speed and that the Attorney General, the Office of Homeland Security, and others immediately establish an Integrated Entry and Exit System Task Force to accomplish this task. The USA Patriot Act also mandates a focus on biometric technology and development of tamper-resistant documents that will be machine readable at POEs. Further, it requires that the system interface with law enforcement databases and provide access for federal law enforcement authorities so that they can identify and detain individuals who pose a threat to national security.

Scope and Methodology

For this follow-up report, we reviewed recent INS correspondence, conducted extensive research of legislation related to entry-exit alien control systems and the Visa Waiver Program (VWP), and reviewed Congressional Research Service reports and Congressional testimony. The INS Statistics

Office provided the OIG with INS-wide inspection data from air, land, and sea POEs for FY 1999 through FY 2001. We also interviewed INS officials, including officials from the INS Inspections and Statistics offices and the Program Manager at the INS Lookout Unit, as well as Department of State personnel.

RESULTS OF THE REVIEW

In this follow-up review, we found that since our 1997 report the INS has not taken effective action to address the recommendations in our report. We found that the INS has not improved the reliable collection of I-94s, particularly the departure records; the INS does not actively monitor airline compliance with the requirement to provide correct and complete departure I-94s; and the INS has not yet implemented the regulations to fine airlines that fail to comply. The NIIS data collected by the INS is not reliable and therefore cannot be used by the Attorney General to certify participation in the VWP. In addition, the INS still has no automated system to provide the necessary support for an effective enforcement strategy that would be a deterrent against nonimmigrant overstays who remain in the United States or a strategy that would assist in finding them.

Status of OIG Recommendations from 1997 Report

Recommendation 1

Improve the collection of departure records by working with airlines to promote compliance, actively monitoring carrier compliance, and fining noncompliant airlines.

In our 1997 report, we determined that NIIS did not contain departure records for a large number of aliens, most of whom the INS believed had left the United States. The INS believed most of these unrecorded departures resulted from either the failure of the airlines to collect Form I-94s from departing nonimmigrants or from nonimmigrants departing the United States through land POEs. Lack of departure records means that the INS is unable to determine with certainty the number of overstays or which apparent nonimmigrant overstays are true overstays.

The INS attempted to determine the scope of the deficiencies by testing collection of I-94s at certain airports and for certain airline carriers. The INS planned to develop an on-site airline-specific training module based on the results of the tests, and enhance airline compliance by initiating fines.³ In January 1998, while awaiting the test results, the INS disseminated

³ The INS wanted to determine if the failure to return departure records was limited to a particular carrier at individual POEs, many or all airlines at a particular POE, or particular airlines nationwide. The INS is authorized by Section 231 of the Immigration and Nationality Act (INA) to fine airlines \$300 for each complete and accurate Form I-94 departure record they fail to provide to the INS.

information sheets for airlines and POEs on the proper procedure for completion, collection, and submission of Form I-94s to the INS. This interim measure was intended to help the carriers reduce or eliminate Form I-94 errors as a cause for the failure to successfully match arrival and departure records in NIIS.

To test the collection of I-94s the INS prepared an arrival/departure comparison chart from NIIS sample data and, using this data, selected two POEs in each region to validate the comparison data. The validation involved monitoring the submission of departure forms by specific airlines for one month. The INS completed the analysis in August 2000 and determined that most airlines were not submitting complete and accurate departure information on a substantial number of the departure records, which prevented the INS from matching arrival and departure records. The INS found that the problems were not specific to an airline or a POE. Based on this analysis, the INS developed an airline-training program to improve the collection of Form I-94s and to enhance the accuracy of the information on the forms. The INS provided information about this training program to the OIG on December 14, 2001. However, the INS did not implement the training program because it had been waiting for fuller deployment of the INS's Automated I-94 System (discussed later).

To improve airline compliance with the completing, collecting, and delivering of Form I-94s to the INS, the INS also sought to clarify its policy for imposing fines on airlines for non-compliance with Section 231(d) of the INA, (*i.e.*, the airlines' failure to turn in complete and accurate departure I-94s). The Federal Register Notice of the INS's intent to fine noncompliant airlines was published in November 1998. However, according to the INS, it cannot impose the fines until it amends Title 8, Section 231 of the Code of Federal Regulations (CFR) to promulgate rules for imposing fines. As of January 2002, the INS had not finalized such an amendment. An INS official told the OIG that the amendment was indefinitely delayed because it is tied to the Automated I-94 System that was to be used to determine airline compliance. But as we discuss in the next section of this report, a November 2001 cost-benefit analysis of the Automated I-94 System by the INS recommended that it be discontinued in favor of the effort to develop the integrated entry-exit control system mandated by the USA Patriot Act. If the recommendation is accepted, it is not clear what the immediate effect would be on the effort to amend the CFR regulations and impose fines on the airlines.

In summary, since issuance of our 1997 report, the INS has not implemented measures to ensure that the airlines collect accurate and complete Form I-94s from all arriving and departing nonimmigrants, has not

implemented the airline training program, and has not published the amendment to the CFR to fine non-compliant airlines.

Recommendation 2

Implement a course of action that will ensure complete and reliable NIIS data. NIIS data must be sufficiently complete and reliable to meet the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and to enable the Attorney General to fully perform his responsibilities under the Visa Waiver Pilot Program (VWPP).⁴

The INS planned to rely on its Automated I-94 System to satisfy this recommendation. The INS hoped that its Automated I-94 System would provide the INS with the capability to match automated departure records for aliens departing the United States with their automated arrival records. This would enable the INS to identify overstays. However, the success of the Automated I-94 System is highly reliant on the cooperation and participation of the airlines in ensuring accurate arrival data at passenger check-in and promptly collecting and providing departure information. The prototype Automated I-94 System operated at four airports with two airlines.

The INS planned implementation of the Automated I-94 System in two stages, beginning with major airports in FY 2001. This would have provided the INS with the ability to capture arrival and departure information for approximately 87 percent of all aliens arriving by air. Full implementation at all U.S. airports was planned for FY 2002. In September 2000, however, INS officials informed the OIG that implementation of both stages has been delayed until FY 2002 and FY 2003, due to problems encountered with the pilot program and budget constraints.

The OIG Audit Division issued a report in August 2001 entitled “Automated I-94 System (Report Number 01-18),” which concluded that the INS had not properly managed the Automated I-94 System project. Despite having spent \$31.2 million on the system from FY 1996 to FY 2000, the INS did

⁴ In October 2000, the INA was amended to permanently authorize the Visa Waiver Pilot Program. This act is referred to as the Visa Waiver Permanent Program Act (VWPPA), and its provisions supersede the Attorney General’s responsibilities that we refer to in the recommendation. However, under the permanent act, the entry-exit system must be sufficient to allow, for each program country each fiscal year, the calculation of the portion of nationals of that country for whom no departure record exists (*i.e.*, overstays). We describe the INS’s handling of the Visa Waiver Program in our report entitled “The Potential for Fraud and the INS’s Efforts to Reduce the Risks of the Visa Waiver Pilot Program (March 1999)” and our follow-up report entitled “Follow-up Report on the Visa Waiver Program (December 2001).”

not have clear evidence that the system would meet its intended goals. The INS estimated that an additional \$57 million would be needed through FY 2005 to complete the system. The OIG recommended that the INS conduct a cost-benefit analysis of the Automated I-94 System prior to making any further expenditures.

The INS issued its cost-benefit analysis on the Automated I-94 System on November 28, 2001. The analysis concluded that if the INS spent the additional \$57 million to redesign the system and fix the known problems, the system would “appear to have met the original requirements set forth in IIRIRA.” However, the INS report went on to state that, “it is doubtful whether this system can fulfill the specifications of either DMIA or VWPPA. Successive legislation to IIRIRA clearly calls for a sophisticated entry/exit control system, which the Automated I-94 is not, nor was intended to be.” In light of the terrorist attacks of September 11, 2001, the analysis asserted that resources should be devoted to developing the entry-exit system required by the USA Patriot Act rather than continuing to spend resources on the Automated I-94 System. The analysis stated that it was in the best interest of the INS to incorporate the lessons and experience gained from piloting the Automated I-94 System and instead spend its resources on an integrated entry-exit control system that will meet the specified legislative requirements. The analysis recommended that the entry-exit system should take priority over redesigning the Automated I-94 system. On February 18, 2002, the INS officially terminated the Automated I-94 System project.

According to an official from the INS’s Statistics Office, the unreliability of nonimmigrant information continues to be a problem. A basic shortcoming is the collection of departure records – not only at air POEs, but also at land POEs where no mechanism exists to collect the forms of those nonimmigrants who are required to provide them. The Statistics Office estimated that for every 100 arrival forms the INS receives, it receives about 80 to 83 departure forms. Further, the actual matching process is problematic because of data entry errors. Duplicate records still exist because the airlines photocopy blank Form I-94s, causing different aliens to have the same admission number. To compound the difficulty in identifying overstays, the Statistics Office no longer receives updates on visa extensions or adjustments of status. Therefore, some aliens appear to be overstays when they are legally in the United States. The Statistics Office official acknowledged that current Form I-94 data is not reliable for:

- Estimating the overall overstay rate.

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- Assisting in determining a country's continuation in the Visa Waiver Program.
 - Determining with certainty whether an alien who appears to be an overstay is actually an overstay.

As noted above, the USA Patriot Act mandated that an Entry-Exit Task Force be established to create a comprehensive entry-exit system. The task force project team began meeting in February 2002. The Entry-Exit Task Force is led by the INS and the U.S. Customs Service of the Department of the Treasury and includes the Departments of State, Commerce, and Transportation.⁵

The Entry-Exit Task Force has agreed that the first phase of the comprehensive plan will be to collect information electronically for arrival and departures of persons participating in the VWP at air and certain sea POEs. This first phase will provide data that will allow the Attorney General to certify the continued participation of countries that are enrolled in the VWP. The Commissioner of INS has pledged to complete this phase by January 2003.

Recommendations 3 and 4

Conduct an analysis of overstay data that will support the development of an overstay enforcement strategy.

Develop an interior enforcement strategy to address the increasing overstay population.

The INS concurred with the 1997 OIG report's findings that there were gaps in the INS's information on nonimmigrant overstays. The absence of reliable data from NIIS was one cause. The other was that the INS used little recent overstay data that was available to it from its benefits and enforcement programs to better target and direct its enforcement efforts against overstays. The last INS analysis of the characteristics of the overstay population was

⁵ Another advisory task force has been established to discuss changes required by the Data Management Improvement Act of 2000 (DMIA), Public Law 106-215. The DMIA task force was created to evaluate how traffic flow at United States airports, seaports, and land border ports of entry can be improved while enhancing security and establishing systems for data collection and data sharing. This task force also is led by the INS and the Customs Service and includes the Departments of State, Commerce, and Transportation. In addition, the DMIA Task Force has an advisory group that includes members from state and local government and private organizations.

issued in 1994.⁶ The 1994 analysis had updated a 1992 INS study, “Report on the Legalized Alien Population,” that was based on data provided by aliens who entered the United States illegally in the early 1980s and then applied for amnesty after the passage of the Immigration Reform and Control Act of 1986.

In January 1998, the INS stated its intention to analyze again its records of apprehension, records of persons removed, and records of illegal aliens who applied to adjust to legal permanent resident status. This would include the more current data provided by aliens who applied for adjustment under the provisions of 245(i) between 1994 and 1997, among whom were thousands of self-reported overstays.⁷ The proposed analysis was intended to assist in developing an enforcement strategy to apprehend overstays.

As part of this analysis, the INS proposed to carry out an ambitious six-step plan to assess information available in its automated enforcement and benefits systems and draw samples from paper records. However, this analysis proved difficult because the INS records of arrest and benefits did not compile information on overstays. For example, INS field operation reports did not contain, nor did the INS produce, aggregate data on the number of overstays apprehended. By July 1999, the INS had completed only the first step in the plan (an analysis of occupations and industries of former illegal aliens granted legalization by method of entry, using surveys of aliens conducted in 1989 and 1992).

The INS issued a new Interior Enforcement Strategy in 1999 (with an addendum added in March 2000). Yet, the INS recognized that any enforcement strategy aimed at overstays needed a comprehensive entry-exit control system. The 1999 Interior Enforcement Strategy intended to rely on the proposed Automated I-94 System to identify overstays as part of the strategy.⁸ But, as discussed above, a reliable automated I-94 system has not been implemented. The INS now acknowledges that its ability to implement an

⁶ “Estimates of the Undocumented Immigrant Population Residing in the United States by Country of Origin and State of Residence as of October 1992,” Robert Warren, INS Statistics Division.

⁷ This provision allows certain aliens illegally present in the United States, who are otherwise eligible for immigrant visas, to apply for legal permanent residency for a fee of \$1,130. Prior to enactment of Section 245(i), these overstays had to depart the United States and apply for an immigrant visa in order to become a legal permanent U.S. resident.

⁸ INS investigators also pointed out that even if the Automated I-94 System correctly identified alien overstays, the U.S. address information provided on the I-94 would be of very limited value in locating the alien.

effective interior enforcement strategy for overstays is limited because of this lack of an accurate entry-exit system to identify individual overstays.

CONCLUSION

In sum, the INS has made little progress in effectively addressing the problem of nonimmigrant overstays since we issued our 1997 report. The terrorist attacks of September 11, 2001, focused renewed attention on the importance of knowing when nonimmigrant visitors enter and depart the United States. It is critical for the INS to be able to identify individual overstays, collect aggregate information on overstays, and develop an effective interior enforcement strategy for pursuing overstays who are identified as representing the greatest potential risk to the security of the United States.

Our original report focused on the weaknesses of the NIIS system that was, and still is, the INS's principal means of identifying overstays. At the time of our original report, the INS expected that its Automated I-94 System would provide the necessary arrival and departure information to identify overstays and help in the development of an effective enforcement strategy to address the problem. However, according to the INS's recent evaluation, the Automated I-94 System would not be able to identify overstays or meet the requirements of the USA Patriot Act, which mandates development of an integrated entry-exit control system. Consequently, the INS has terminated the Automated I-94 project.

As a result, the findings from our 1997 report still apply today. The INS does not have a reliable system to track overstays, does not have a specific overstay enforcement program, and cannot perform its responsibilities under the Visa Waiver Program to provide accurate data on overstays.

It is clear that the key to the timely identification of overstays is an integrated entry-exit control system. The INS and other federal agencies are now working together in a task force to develop such a system, with provisions for biometric identifiers and machine-readable documents. The first phase of the project will provide data that will allow the Attorney General to certify the continued participation of countries that are enrolled in the Visa Waiver Program, and the INS Commissioner has pledged to complete this phase by January 2003.

Even if this goal is met, however, completion of the entire entry-exit system will take years. In the interim, we believe the INS should consider taking steps to help address the issue of nonimmigrant overstays, such as implementing the recommendations from our 1997 report regarding the improvement of collection of departure records by working with airlines to promote carrier compliance, monitoring carrier compliance, and fining non-

compliant airlines. We recognize that these steps are limited and will not address the need for a reliable entry-exit system. The success of the INS in developing such a reliable automated entry-exit system is essential to addressing the overstay issue. Because of its importance, the OIG intends to continue to monitor and evaluate the INS's progress in developing this critical system.