



Department of Homeland Security Office of Inspector General

~~**SENSITIVE SECURITY INFORMATION**~~

Role of the No Fly and Selectee Lists in Securing Commercial Aviation

(REDACTED)



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Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

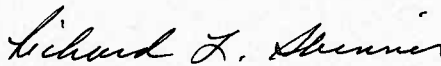
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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report is in response to a congressional mandate in the *Department of Homeland Security Appropriations Act of 2008* (Public Law 110-161, Division E). It addresses whether potential vulnerabilities to commercial aviation exist as a result of the Transportation Security Administration's use of a subset of the federal consolidated Terrorist Screening Database in conducting commercial air carrier passenger prescreening instead of screening against all records in the database. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, a review of applicable documents, and data analysis.

The recommendation herein has been developed to the best knowledge available to our office, and has been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.


Richard L. Skinner
Inspector General

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Abbreviations

APIS	Advance Passenger Information System
CAPPS	Computer-Assisted Passenger Prescreening System
CBP	U.S. Customs and Border Protection
CLASS	Consular Lookout and Support System
DHS	Department of Homeland Security
FAMS	Federal Air Marshal Service
FBI	Federal Bureau of Investigation
GAO	Government Accountability Office
NCTC	National Counterterrorism Center
NTC-P	National Targeting Center-Passenger
OIG	Office of Inspector General
SME	subject matter expert
TIDE	Terrorist Identities Datamart Environment
TSA	Transportation Security Administration
TSC	Terrorist Screening Center
TSDB	Terrorist Screening Database
TSO	Transportation Security Officer
VGTOF	Violent Gang and Terrorist Organization File
VWP	Visa Waiver Program

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Executive Summary

At the direction of the House and Senate Committees on Appropriations, Subcommittees on Homeland Security, we reviewed whether potential vulnerabilities exist in commercial air carrier passenger screening. Specifically, we were asked to review the Transportation Security Administration Secure Flight program's intention to screen passenger information against only the No Fly and Selectee lists, rather than the entire government terrorist watch list database. We analyzed: (1) the watch list criteria and compositions of the No Fly and Selectee lists and the full consolidated Terrorist Screening Database; and (2) the differences between the criteria for inclusion on the No Fly and Selectee lists and the full database. Our objective was to determine whether potential vulnerabilities to the aviation system exist as a result of screening commercial air carrier passenger names against the No Fly and Selectee lists, instead of the full database.

The No Fly and Selectee lists are subsets of the federal government's consolidated watch list, the Terrorist Screening Database.

Although the use of the No Fly and Selectee lists is largely successful in identifying potential terrorists who could threaten commercial aviation, some individuals not included on the lists may also present vulnerabilities to aviation security. However, passenger prescreening against terrorist watch lists proposed by the Secure Flight program is only one component of a larger security cycle that protects the nation's commercial aviation system. International and domestic security activities within and outside of

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the Department of Homeland Security, such as intelligence gathering, law enforcement investigations, visa issuance, and border protection, mitigate potential vulnerabilities not addressed by the Secure Flight program and enhance commercial aviation security overall.

We are making one recommendation to the Assistant Secretary for the Transportation Security Administration to determine whether it is appropriate to [REDACTED]

[REDACTED] The Transportation Security Administration concurred in part with the recommendation.

Background

Securing the commercial aviation sector has been a major priority of the federal government since the terrorist attacks of September 11, 2001. The *Aviation and Transportation Security Act of 2001* established the Transportation Security Administration (TSA) and tasked it with securing all modes of transportation, including commercial aviation.¹ TSA is responsible for ensuring that all commercial air carrier passengers are prescreened against government terrorist watch lists prior to boarding an aircraft. Specifically, TSA uses the No Fly and Selectee lists, subsets of the Terrorist Screening Database (TSDB)—the U.S. government’s consolidated watch list of all known or reasonably suspected terrorists—to identify individuals who are prohibited from boarding an aircraft or who are to receive additional physical screening prior to boarding an aircraft.

Currently, the majority of commercial air carriers, under the direction of TSA, perform passenger prescreening by comparing passenger names to records on the No Fly and Selectee lists. Although commercial air carriers are required to adhere to TSA guidelines that mandate how commercial air carriers conduct watch list screening, air carriers perform this function inconsistently. As a result, *The 9/11 Commission Report of 2004* recommended that TSA, instead of commercial air carriers, should perform passenger prescreening.² In doing so, TSA should also use the larger set of terrorist watch lists maintained by the federal government, rather than only the No Fly and Selectee lists, which were solely maintained by TSA at the time.³

Secure Flight Program Implementation

To address federalizing commercial air carrier passenger prescreening as recommended in *The 9/11 Commission Report* and mandated in the *Intelligence Reform and Terrorism Prevention Act of 2004*, TSA introduced the concept of the Secure Flight program in August 2004.⁴ In

¹ Public Law 107-71 (November 19, 2001).

² *Final Report of the National Commission on Terrorist Attacks Upon the United States* (issued July 22, 2004), page 393.

³ *Ibid.*

⁴ Public Law 108-458 (December 17, 2004).

making passenger prescreening an inherently governmental function, TSA, not commercial air carriers, will bear the responsibility for conducting passenger prescreening. From a policy standpoint, the Secure Flight program will match the full name, date of birth, and gender of passengers against the No Fly and Selectee lists, instead of the current requirement, which is for commercial air carriers to screen only a passenger's name against the No Fly and Selectee lists. In addition, with the Secure Flight program, in cases where certain yet-to-be-defined security considerations exist, TSA could screen against the federal government's entire consolidated terrorist watch list for particular flights or routes.

Concern regarding TSA's decision to screen against only the No Fly and Selectee lists prompted Congress, in the *Department of Homeland Security Appropriations Act of 2008*, to mandate that we report on any potential vulnerabilities to the nation's aviation system should the Secure Flight program not screen against the full TSDB.⁵ As an additional provision of the 2008 appropriation, should TSA decide that the Secure Flight program does not need to check commercial air carrier passenger names against the full TSDB, Congress required TSA to certify "that no significant security risks are raised by screening airline passenger names only against a subset of the full terrorist watch list."⁶ Congress further stipulated that funding for the implementation of the Secure Flight program would not become available until the Government Accountability Office (GAO) reported on TSA's success in meeting the conditions specified in the *Department of Homeland Security Appropriations Act of 2005*.⁷

⁵ Division E – *Department of Homeland Security Appropriations Act of 2008, Consolidated Appropriations Act of 2008*, Public Law 110-161 (December 26, 2007).

⁶ Public Law 110-161, Division E, 121 STAT. 2053.

⁷ *Department of Homeland Security Appropriations Act of 2005*, Public Law 108-334 (October 18, 2004), Sec. 522(a).

TSA management said that after GAO reported on TSA's fulfillment of the ten congressional conditions, the Secure Flight program began to assume domestic No Fly and Selectee watch list matching responsibilities from commercial air carriers in January 2009, and will begin to assume international watch list screening at some point thereafter. The program's intended outcome is to:

- Prohibit terrorists [REDACTED] to harm the United States from boarding an aircraft; and

- [REDACTED]

Once Secure Flight is fully operational, commercial air carriers will be required to submit the full name, date of birth, and gender of passengers to the Secure Flight program at approximately 72 hours before a flight. For reservations made within 72 hours of a flight, aircraft operators must submit the required information as soon as feasible after the reservation is made. Secure Flight will then vet names using automated search protocols to clear as many passengers as possible. Any potential matches to individuals on the No Fly and Selectee lists will then go through a manual review process conducted by Secure Flight, TSA's Office of Intelligence, and the Department of Justice's Terrorist Screening Center (TSC) analysts, to make identity determinations and to resolve potential matches. The TSC maintains the federal government's consolidated terrorist watch list. Using a similar process, U.S. Customs and Border Protection (CBP) also leverages its Advance Passenger Information System—which requires commercial air carriers to submit certain passenger manifest information to CBP—for vetting passengers prior to securing an aircraft for departure to or from the United States. CBP continues to provide assistance to TSA's Office of Intelligence as an additional layer of security to its screening of possible international No Fly matches.

Terrorist Screening Database

In September 2003, *Homeland Security Presidential Directive-6* mandated that the "Attorney General shall establish an organization to consolidate the Government's approach to terrorism screening and provide for the appropriate and lawful use of Terrorist Information in screening

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processes.”⁸ In fulfilling this mandate, the Department of Justice established the TSC. Pursuant to *Homeland Security Presidential Directive–6*, and further clarified in *Homeland Security Presidential Directive–11*, the TSDB is to contain information about “individuals known or reasonably suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism.”⁹ Within the watch-listing community, such individuals are referred to as “known or reasonably suspected terrorists.”

Sources for the Terrorist Screening Database

The TSDB is populated with biographic and biometric identity information on individuals reasonably suspected of engaging in either international or domestic terrorism. All information contained within the TSDB is sensitive but unclassified, so the broadest range of federal, state, local, and international terrorist screening partners can benefit from using various watch lists derived from the TSDB and exported by the TSC. The term export describes the transfer of record information from one database to another. Although the TSDB serves as the central clearinghouse for all terrorist screening information, all information in the TSDB is derived from two sources, which contain supporting information on each individual who is known or reasonably suspected to be connected to terrorism.

The primary source for all information relating to international terrorist identities in the TSDB is the Office of the Director of National Intelligence’s National Counterterrorism Center (NCTC) Terrorist Identities Datamart Environment (TIDE). The NCTC, established by Executive Order 13354 and codified in the *Intelligence Reform and Terrorism Prevention Act of 2004*, “serve[s] as the primary organization in the United States Government for analyzing and integrating all intelligence possessed or acquired by the United States Government pertaining to terrorism and counterterrorism, excepting intelligence pertaining exclusively

⁸ Homeland Security Presidential Directive–6, “Integration and Use of Screening Information to Protect Against Terrorism” (September 16, 2003).

⁹ Homeland Security Presidential Directive–11, “Comprehensive Terrorist-Related Screening Procedures” (August 27, 2004).

to domestic terrorists and domestic counterterrorism.”¹⁰ TIDE, a classified system, contains both the identifying and substantive derogatory information on known or reasonably suspected international terrorists. This information is provided to the NCTC through nominations of individuals made by federal agencies, often with the explicit intent for the record to then be exported to the TSDB for watch-listing. Additionally, TIDE contains [REDACTED] records for spouses and children of known or reasonably suspected terrorists, as well as other individuals who have a close relationship with those terrorists. To populate the TSDB, the NCTC exports biographic and biometric identifiers from TIDE records to the TSC on a daily basis. Of the non-terrorist associates contained in TIDE, only data on spouses and children who are not U.S. citizens or lawful permanent residents are exported to the TSDB, in accordance with the *Immigration and Nationality Act of 1952*, which deems spouses and children meeting certain criteria excludable from admission into the United States.¹¹

The remaining information in the TSDB pertains solely to domestic terrorism information. This information is provided to the TSC directly from the Federal Bureau of Investigation (FBI). The FBI’s Automated Case Support system contains additional supporting information on domestic terrorists, beyond any biometric and biographic identifiers, which are exported to the TSDB.

Minimum Database Inclusion Criteria

Before a record can be exported to the TSDB, it must meet certain minimum biographic and substantive derogatory criteria requirements. The current criteria requirements are derived from the broad *Homeland Security Presidential Directive–6* and *Homeland Security Presidential Directive–11* standard, which stipulates that only known or reasonably suspected terrorists may be included in the TSDB.

Current TSC guidance on nominating individuals to the TSDB further defines the reasonable suspicion standard, by stating that

¹⁰ Public Law 108-458 (December 17, 2004).

¹¹ Public Law 82-414 (June 27, 1952), as amended; 8 U.S.C. § 1182(a)(3)(B)(i)(IX).

the

In contrast, information originating from an unreliable source might cause a trained reviewer to discount the information as too tenuous.

The minimum biographic identifier requirements necessary for a record to export to the TSDB were revised by the TSC's Policy Board Working Group in June 2008.

Terrorist Screening Database Composition

As of May 2008, just prior to implementing the revised minimum biographic inclusion criteria, the TSDB included approximately 1,005,000 records. Each alias, including reversed names, nicknames, modified birth dates, or other variations of a single identity or individual, has a separate TSDB record. As a result, TSC officials are not able to pinpoint the precise number of unique persons in the TSDB, but estimate there are approximately

distinct identities. Of the [REDACTED] distinct identities, [REDACTED] are citizens or lawful permanent residents of the United States.

No Fly and Selectee Lists

The No Fly and Selectee lists, two TSDB derivative watch lists, are unique among all watch lists derived from the TSDB. They are the only derivative watch lists that have their own minimum substantive derogatory criteria requirements. These requirements are considerably more stringent than the TSDB's known or reasonably suspected standard. Additionally, the No Fly and Selectee lists have the narrowest minimum biographic inclusion criteria of all TSDB watch lists.

Minimum Inclusion Criteria

The No Fly and Selectee inclusion criteria were initially established in October 2004 by the Homeland Security Council. This council is a cabinet-level body that coordinates homeland security-related activities and promotes effective homeland security policy development and implementation. The *No Fly and Selectee Lists Implementation Guidance* accompanying the inclusion criteria was released in January 2005. When establishing the initial criteria, responsibility for maintenance and export of the lists was transferred to the TSC. Prior to this time, TSA maintained the No Fly and Selectee lists. The lists were created in September 2001, before TSA was established, when the Federal Aviation Administration received 125 names from the FBI for inclusion on a No Fly list.

No Fly List Criteria

The TSC updated and supplemented the implementation guidance in July 2006. Recently, the Homeland Security Council [REDACTED] to allow for inclusion of more individuals on the No Fly list. The TSC's Policy Board Working Group followed suit with new implementation guidance, all of which went into effect in June 2008. Appendix D provides more detail on the *No Fly and Selectee List Implementation Guidance*.

[Redacted]

[Redacted]

Selectee List Criteria

The derogatory information criteria for including an individual on the Selectee list require that an individual who is ineligible for inclusion on the No Fly list meet [Redacted] the Selectee list criteria. Specifically, the Selectee list should include any person, regardless of citizenship, who is:

[Redacted]

[Redacted]

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[REDACTED]

In applying more narrow requirements than the TSDB's minimum substantive derogatory criteria requirements, the No Fly and Selectee lists are intended to prevent specific categories of terrorists from boarding commercial aircraft or subject these terrorists to secondary screening prior to boarding, and are not for use as law enforcement or intelligence-gathering tools. Past and present implementation guidance emphasizes that the criteria for the No Fly list require a [REDACTED] and that the Selectee list is not a default for those who do not qualify for inclusion on the No Fly list.

The current minimum biographic inclusion criteria for the No Fly and Selectee lists, which were not changed during the June 2008 policy revisions, require a [REDACTED] for a TSDB record to export to either list.

[REDACTED] Given the restrictive derogatory and biographic criteria for inclusion on the No Fly and Selectee lists, these lists combined comprise the smallest exported subset of the TSDB. As of May 2008, the No Fly list contained approximately [REDACTED] records, and the Selectee list contained approximately [REDACTED] records, collectively comprising [REDACTED] of the TSDB's records. Additionally, the combined number of No Fly and Selectee records represents approximately [REDACTED] distinct identities, of which [REDACTED] are U.S. citizens or lawful permanent residents.

Process for Inclusion on the No Fly and Selectee Lists

Redundancies in the process through which individuals are added to the No Fly or Selectee list ensure that the proper individuals are watch-listed. For international terrorists, this process starts with a federal agency, usually a member of the U.S. Intelligence Community, nominating an individual for inclusion in TIDE. The

NCTC's Terrorist Identities Group reviews nominations for the reliability of derogatory information and the sufficiency of biographic identifying information.

Nominating agencies can recommend an individual for inclusion on specific TSDB derivative watch lists, such as the No Fly and Selectee lists. Additionally, although the NCTC is not a nominator, its Terrorist Identities Group analysts, after reviewing all source intelligence information, may identify eligible individuals for watch-listing and contact the originator of the intelligence to request that the individual be nominated for inclusion in TIDE with specific watch list recommendations. Domestic terrorists are nominated to the TSDB via the FBI's Terrorist Review and Examination Unit, by FBI case agents, and by the FBI's Counterterrorism Division; also, each of these can make specific watch list recommendations.

the NCTC transmits to the TSC an export of additions and modifications of biographic and biometric identifiers from TIDE, resulting in additions, modifications, and deletions to the TSDB. These transmissions are collectively referred to as nominations. Analysts in the Nominations and Data Integrity Unit at the TSC perform a comprehensive review of each nomination for inclusion eligibility in the TSDB and for appropriateness of export to the various watch lists. As part of this review, TSC analysts review specific recommendations for initial No Fly or Selectee watch-listing, as well as follow-up recommendations for changes to an individual's No Fly or Selectee status. This review ensures that recommendations are consistent with the biographic and derogatory inclusion criteria. Appendix E provides a graphic representation of the No Fly and Selectee list nomination process.

When TSC analysts recommend a change to an individual's No Fly or Selectee status, the nomination is forwarded to TSA subject matter experts (SME), who are detailed to the TSC from TSA's Office of Intelligence and Federal Air Marshal Service (FAMS). The SMEs review the previous analyst's notes and all accessible derogatory information associated with the nomination. When SMEs determine that a change to the No Fly or Selectee status is warranted, TSA coordinates the change with the FBI's Terrorist

Review and Examination Unit and case agents for FBI investigative subjects, or with the NCTC for nominations from other federal agencies.

Domestic terrorism nominations go through a similar process. TSC domestic terrorism SMEs also review nominations for TSDB inclusion eligibility and for appropriateness to export to various watch lists, including the No Fly and Selectee lists. The SMEs coordinate with the Terrorist Review and Examination Unit to resolve any issues with a nomination or its watch-listing recommendation.

TSC quality assurance measures ensure that the correct individuals are on the appropriate watch lists. In addition to the process of determining the No Fly and Selectee status of original and follow-up nominations, the Nominations and Data Integrity Unit conducts periodic reviews of the No Fly and Selectee lists, known as Quality Assurance Special Projects. In 2006, the TSC initiated a comprehensive review of the No Fly list. That review resulted in some individuals being downgraded to the Selectee list while others were removed from both lists because they did not have the

[REDACTED] were removed from the No Fly list because they were neither a threat to the United States nor to commercial aviation. The TSC subsequently conducted a review of the Selectee list with the intent of removing individuals who no longer had [REDACTED]

Periodic list review ensures that individuals on the No Fly or Selectee lists meet specific nomination and inclusion criteria, thus

[REDACTED]

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Other Watch Lists Derived From the Terrorist Screening Database

In addition to the No Fly and Selectee lists, the TSDB exports daily to three other federal watch lists that are also used to conduct terrorism screening. Although none of these databases has its own minimum substantive derogatory criteria beyond the known or reasonably suspected standard, each has minimum biographic criteria requirements and some have additional restrictions.

U.S. Customs and Border Protection's TECS Database

TECS serves as DHS' primary lookout system and receives [REDACTED] exports of TSDB records from the TSC. TECS receives subject records from more than 20 federal agencies, includes a wide spectrum of data, and provides alerts for a variety of law enforcement needs. CBP, the principal owner and primary user of TECS, employs the system to screen individuals at land, sea, and air ports of entry, as well as other locations worldwide where CBP may have a presence. A number of other federal law enforcement agencies within and outside of DHS also use TECS as a screening and case management system.

Of the federal watch lists that accept records from the TSDB, TECS has the most expansive minimum biographic inclusion criteria and [REDACTED] from the TSDB. Similar to the TSDB, for a record to export to TECS, it must only [REDACTED]. As of May 2008, TECS contained approximately [REDACTED] TSDB records, comprising [REDACTED] of all records in the TSDB. The [REDACTED] records represent approximately [REDACTED] distinct identities, of which [REDACTED] are U.S. citizens or lawful permanent residents.

Department of State's Consular Lookout and Support System

The Department of State's Consular Lookout and Support System (CLASS) is a name-checking system used to screen visa applications for travel to the United States. A visa allows a foreign national to travel to a U.S. port of entry to request admittance into the country. Administered by the Visa Office within the Department of State's Bureau of Consular Affairs, CLASS is used

by consular officers abroad to screen the names of visa applicants against a number of government watch lists, including an exported subset of the TSDB. Once a CLASS name search identifies an individual, and that identity is verified, Department of State consular officers make a determination of visa eligibility according to federal law.

Similar to TECS, CLASS has very expansive minimum biographic inclusion criteria, and accepts nearly all records from the TSDB.

However, because CLASS is used for visa applicant screening, TSDB records for U.S. citizens or lawful permanent residents do not export to CLASS. Additionally, individuals

As of May 2008, CLASS contained approximately TSDB records, comprising of all TSDB records. The records represent approximately distinct identities. The TSDB also exports records, based on different criteria, to another version of CLASS used to screen passport applicants and includes data on U.S. citizens and lawful permanent residents, a system that is not addressed in our report, because it does not substantively contribute to aviation security.

Federal Bureau of Investigation's Violent Gang and Terrorist Organization File

The FBI's Violent Gang and Terrorist Organization File (VGTOF) is a subset of the National Crime Information Center database used for screening by federal, state, and local law enforcement officers and other criminal justice agencies. VGTOF contains information on known or reasonably suspected terrorists exported from the TSDB, as well as information on gang groups and members from other sources. Each VGTOF terror record has a handling code assigned by the TSDB. For some individuals, the code notifies law enforcement personnel that a valid arrest warrant or detainer may exist.

[REDACTED]

The minimum biographic inclusion criteria for VGTOF are the most restrictive of all federal watch lists, apart from the No Fly and Selectee lists. For a record to export to VGTOF, it must contain a first name, a last name, and [REDACTED] a *circa* year of birth, [REDACTED]. As of May 2008, VGTOF contained approximately [REDACTED] TSDB records, comprising [REDACTED] of all records in the TSDB. The [REDACTED] records represent approximately [REDACTED] distinct identities, of which [REDACTED] are U.S. citizens or lawful permanent residents. Most terrorism-related identities in VGTOF do not have handling codes that indicate a silent hit or a need for arrest or detention.

Additional Non-Federal Watch List Terrorist Screening Database Exports

In addition to the No Fly and Selectee lists, TECS, CLASS, and VGTOF, the TSDB exports to several non-federal government watch lists on a regular basis. In accordance with Information Sharing Memoranda of Understanding with [REDACTED] in 1997, and with [REDACTED] in 2000, the United States shares terrorist watch list information with those governments on a reciprocal basis, excluding information on U.S. citizens or lawful permanent residents. As directed by *Homeland Security Presidential Directive-6*, the TSC, at present, also shares a subset of the TSDB with 13 other foreign countries. Additionally, the entire TSDB is exported daily to the FBI's Automated Case Support system to alert FBI personnel who are using the system that an individual connected with an investigation is associated with terrorism.

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Results of Review

No Fly and Selectee Lists Reduce Vulnerabilities to Commercial Aviation Security, but Additional Vulnerabilities May Exist

The No Fly and Selectee lists are subsets of the TSDB, the federal government's consolidated watch list. The name inclusion criteria for these two lists are more narrowly focused and restrictive than the inclusion criteria for the entire TSDB. Specifically, the No Fly and Selectee lists focus on aviation security and concentrate on [REDACTED]

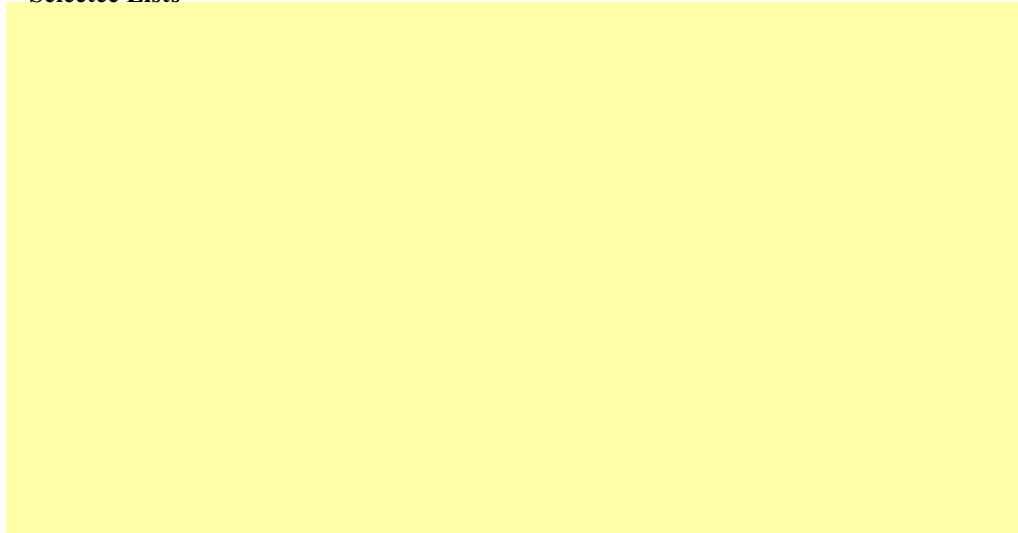
[REDACTED] Although the No Fly and Selectee lists are largely successful in identifying potential terrorists who could threaten commercial aviation, some individuals not included on the lists may also present threats to aviation security.

Individuals With [REDACTED] to Commit Terrorist Acts Are the Focus of No Fly and Selectee Lists

Not all known or reasonably suspected terrorists are prohibited from boarding an aircraft, or are subject to additional security screening prior to boarding an aircraft. This is reflected in the number of records and identities in the TSDB that are not included on the No Fly and Selectee lists. As of May 2008, approximately [REDACTED] records, or [REDACTED] of the TSDB, did not export to the No Fly or Selectee list.

[REDACTED] Figure 1 breaks down the TSDB records and identities that export to the No Fly and Selectee lists.

Figure 1: Breakdown of Records and Identities That Export to the No Fly and Selectee Lists



Known or reasonably suspected terrorists included in the TSDB are not included on the No Fly or Selectee lists if the TIDE information does not meet the minimum standards for sufficient derogatory information. [REDACTED] of all TSDB records are also not eligible for inclusion on the No Fly or Selectee lists because the records do not meet the biographic data requirement of a [REDACTED]. Although a review of the No Fly and Selectee lists' minimum biographic inclusion standard is outside our scope, the Secure Flight program plans to screen against passenger information that includes a full name, complete date of birth, and gender, to ensure accurate name matching to individuals listed on the No Fly and Selectee lists. According to Secure Flight program officials and members of the federal watch-listing community, this plan will reduce the high incidence of individuals mistaken for being on the No Fly or Selectee lists, which is a persistent problem in the passenger prescreening process. Currently, [REDACTED] are used to conduct passenger watch list matching.

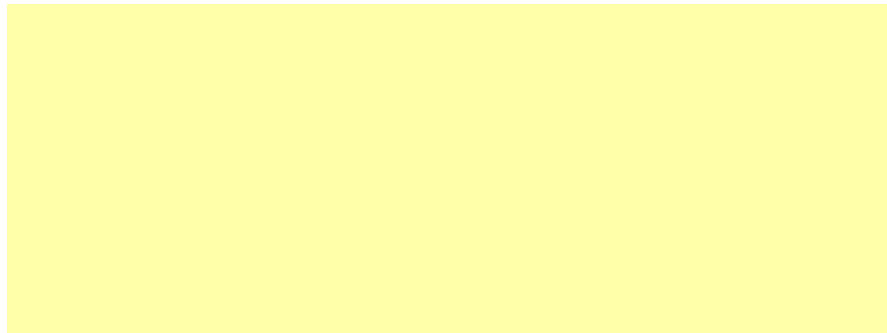
No Fly and Selectee Lists Inclusion Criteria and Guidance in More Detail

The No Fly and Selectee minimum derogatory inclusion criteria and the TSC's *No Fly and Selectee List Implementation Guidance*

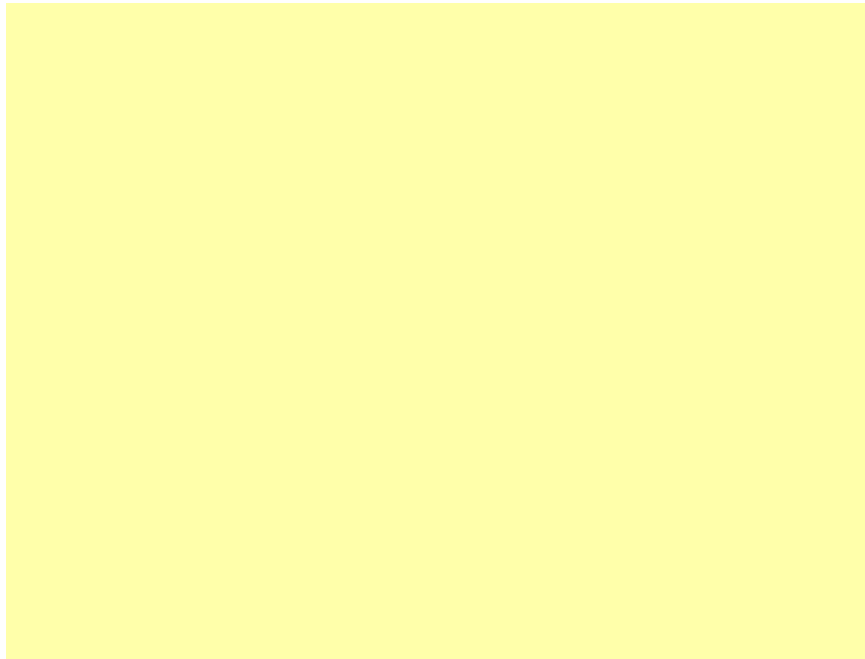
reflect the principles of aviation-focused security. To keep the No Fly and Selectee lists relevant and manageable, the TSC requires that all the information available about an individual should be considered when making No Fly and Selectee watch-listing decisions. Some factors that merit consideration and might mitigate the decision to place an individual on the No Fly or Selectee list are:



Further, to identify potential threats posed by known or reasonably suspected terrorists who do not meet the No Fly or Selectee minimum derogatory inclusion criteria, individuals are categorized by their relationship to terrorism or the types of terrorist activities they are known or reasonably suspected to be engaging in. The TSC's implementation guidance provides an explicit list of categories of individuals who are not suitable for watch-listing on either the No Fly or the Selectee list. These categories are:



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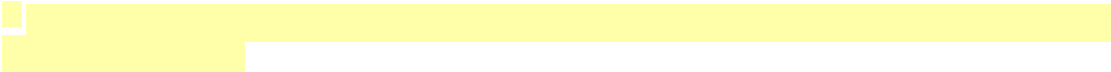


These exclusions further confirm that the focus of the No Fly list should be on individuals who demonstrate the [redacted]. Similarly, the Selectee list covers individuals who do not meet the threshold for inclusion on the No Fly list but nonetheless are [redacted].

Excluding Some Individuals From the No Fly and Selectee Lists Might Present a Vulnerability to Aviation Security

Despite the TSC’s guidance and the watch-listing community’s focus [redacted] excluding some individuals could present a threat to aviation security.

There is consensus among the watch-listing community that individuals who have been identified as [redacted].



[REDACTED]

[REDACTED] as it would seem to present an unaddressed vulnerability to the aviation security system. [REDACTED] scenarios exist with respect to these individuals:

[REDACTED]

[REDACTED]

[REDACTED] However, TSA procedures do not account for the [REDACTED] scenarios.

[REDACTED]

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Recommendation

We recommend that the Assistant Secretary, Transportation Security Administration:

Recommendation #1: Determine whether it is appropriate to [redacted] to No Fly restrictions or additional screening prior to boarding an aircraft.

Management Comments and OIG Analysis

We evaluated TSA's written comments and have made changes to the report where we deemed appropriate. A summary of TSA's written response to the report's recommendation and our analysis of the response follows the recommendation. A copy of TSA's response, in its entirety, is included as Appendix B.

We also received written comments from the NCTC and have made changes to the report where we deemed appropriate. A copy of the NCTC's response, in its entirety, is included as Appendix C. In addition, we received technical comments from TSA, CBP, the TSC, the NCTC, and the State Department Bureau of Consular Affairs, and have incorporated these changes into the report where appropriate. We appreciate the comments and contributions made by each entity.

TSA Response: TSA concurred in part with this recommendation. In its response, TSA management said the nomination criteria for each list produced from the TSDB are developed and approved by a multiagency working group overseen by the Homeland Security Council. Each individual nominated to a terrorist watch list must independently meet the nomination criteria in order to be watch-listed.

[redacted] would require an amendment to the nomination criteria.

[redacted] on the No Fly and Selectee lists, TSA said the only apparent and effective way to ensure that these individuals are restricted from boarding an

aircraft or undergo additional screening would be to add them to the No Fly or Selectee list. TSA management said this would [REDACTED], and raises privacy and other concerns.

[REDACTED] listed on the No Fly or Selectee list meet the criteria for nomination to either list, these individuals will be placed on the list.

TSA management responded further that it will need to explore this issue with other interested agencies to determine whether [REDACTED] on the No Fly and Selectee lists to these lists is a prudent step that would enhance security. However, given the privacy and rights issues involved in this recommendation, TSA management said that it is highly unlikely the lists would be [REDACTED] in this manner.

OIG Analysis: We consider TSA's proposed actions responsive to the recommendation, which is resolved and open. However, we believe that TSA's initial approach to address the recommendation may not be feasible, given that the TSC's implementation guidance provides an explicit list of categories of individuals who are not suitable for watch-listing on either the No Fly or the Selectee list, [REDACTED]

The intent of our recommendation is for TSA to determine whether it is appropriate [REDACTED] on the No Fly or Selectee lists to No Fly restrictions or additional screening prior to boarding an aircraft. TSA already requires [REDACTED]

Should TSA determine there is a potential vulnerability to commercial aviation caused by [REDACTED]

[REDACTED] TSA could address the vulnerability through the use of a security directive. We are not suggesting that TSA take this

action, but provide it as an example of how TSA could address the potential vulnerability.

Major Security Gaps Have Been Addressed by Adding [REDACTED] No Fly Criteria

Prior to adding the [REDACTED] No Fly criteria in June 2008, a critical gap existed in aviation security.

[REDACTED]

[REDACTED]

An Analysis of Encounter Records Demonstrates Watch List Effectiveness

We analyzed terrorism related encounter records provided by CBP's National Targeting Center-Passenger and the Department of State's Bureau of Consular Affairs from June to August 2007. This timeframe

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was selected as representative of the highest volume months for international travel to the United States.

To evaluate the effectiveness of the No Fly and Selectee lists in identifying threats to commercial aviation, we reviewed a series of known or reasonably suspected terrorist encounters that were not on either list. Our list was generated from a sample of Department of State visa refusals and revocations and CBP encounters at ports of entry. The intent of the comparison was to examine the effectiveness of the No Fly and Selectee lists in determining potential threats to aviation security by reviewing the TIDE records of individuals encountered by CBP and Department of State.

We examined the derogatory information in each TIDE record to determine the appropriateness of each individual's watch list status. We used the 2006 criteria to determine whether the individual should have been on the No Fly or Selectee lists at the time of the encounter. We then used the revised 2008 criteria to determine whether the individual would now be on the No Fly or Selectee list. As of September 2008, for the 156 individuals we reviewed:

- [REDACTED] had no TIDE records, or we were unable to match an existing TIDE record to the available information.
- [REDACTED] were watch-listed at one time, but the records were downgraded based on insufficient derogatory information, mistaken matches, or acquisition of clarifying intelligence.
- [REDACTED] were [REDACTED]
- [REDACTED] were in TIDE as the result of an FBI watch list request, and further details regarding the subjects were unavailable.
- [REDACTED] were in TIDE for criminal behavior (e.g., drug or weapons smuggling), as a result of a lost or stolen passport, or [REDACTED]
- [REDACTED] were in TIDE for [REDACTED] or as a potential threat. However, after we reviewed the derogatory information, we concluded that the intelligence reporting was questionable, generally due to the reliability of the reporting. This

category includes three individuals who were in TIDE as the result of an anonymous, malicious information source.

- [REDACTED] had been added to the No Fly or Selectee list subsequent to their encounter with CBP or the Department of State.
- [REDACTED] were assessed as [REDACTED] by the Department of State, and were not considered threats to U.S. interests.

We questioned whether two individuals should have been placed on the Selectee list, particularly when the revised 2008 criteria were applied:

[REDACTED]

We coordinated with senior TSC officials and discussed these initial findings. The TSC conducted multiple and comprehensive reviews of the two cases. Their exhaustive reviews determined that the [REDACTED]

After receiving clarification from the TSC regarding the two individuals whose status we questioned, we determined that all of the known or reasonably suspected terrorists on our list, who could be matched to a TIDE record, did not meet either the 2006 or revised 2008 criteria for No Fly or Selectee list inclusion. This success rate indicates that the No Fly and Selectee lists are successful in identifying individuals who could threaten aviation security. Beyond these individuals not meeting the No Fly and Selectee criteria, none posed a threat to aviation security. This indicates that the use of the No Fly and Selectee lists as prescribed by the implementation guidance is appropriate in identifying individuals who pose threats to aviation security.

Interagency Approach to Commercial Aviation Security Helps to Mitigate Potential Vulnerabilities and Address Potential Gaps

Although the No Fly and Selectee lists are largely successful in identifying potential terrorists who could threaten commercial aviation, passenger prescreening against terrorist watch lists proposed by the Secure Flight program is only one component of a larger security cycle that protects the commercial aviation system. International and domestic security activities within and outside DHS, such as intelligence gathering, law enforcement investigations, visa issuance, and border protection, mitigate potential vulnerabilities not addressed by the Secure Flight program and enhance commercial aviation security overall.

Some security activities, such as law enforcement investigations and intelligence collection, take place well before a known or reasonably suspected terrorist, [REDACTED] attempts to board a commercial aircraft. Other agencies use the intelligence gathered for various terrorist watch-listing activities; each agency has a different focus and set of data tailored specifically for its mission. For example, CBP uses the TSDB-derived portion of TECS to assist in making admissibility decisions for foreign nationals at ports of entry, and the Department of State uses the TSDB-derived portion of CLASS to determine visa eligibility.

Regardless of the primary purpose for each agency's watch list screening activities, these activities function in parallel, and significantly contribute to multiple layers of aviation security. When combined with other security measures that are not based on watch-listing, such as passenger security screening conducted by TSA and law enforcement operations conducted by the FAMS, the multiple, overlapping components of the security cycle assist in mitigating potential aviation security vulnerabilities. Appendix F provides a graphic representation of the way in which comprehensive, multiagency watch list screening, along with other security activities, enhances aviation security.

International and Domestic Intelligence Gathering Is a Key Element of Aviation Security

One foundation of a cross-cutting approach to aviation security is the international and domestic intelligence gathering activities

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conducted, recorded, and shared among the members of the Intelligence Community. These activities, such as the collection and analysis of human intelligence by the Central Intelligence Agency or intelligence-gathering by interception of electronic signals by the National Security Agency, identify individuals known or reasonably suspected to be associated with international terrorism prior to their travel to, and potential entry into, the United States.

Domestically, the FBI is the lead agency responsible for collecting information on international terrorists. The FBI's collection activities are not limited to known or reasonably suspected terrorists on the No Fly and Selectee lists. Individuals of interest can be investigated and surveilled up to and including when they fly domestically. FBI Joint Terrorism Task Forces, which were established in the 1980s and have grown significantly after the September 11, 2001, terrorist attacks, consist primarily of federal, state, and local law enforcement officers who identify and investigate domestic and foreign terrorist groups and individuals operating within the United States.

Additionally, FBI Field Intelligence Groups combine FBI intelligence analysts, special agents, linguists, and surveillance specialists who provide a channel for information to feed through the intelligence community. Other intelligence collection activities include the FBI-led Foreign Terrorist Tracking Task Force, established by *Homeland Security Presidential Directive-2*. This task force is an interagency group that collects and analyzes a wide range of government and publicly available data on suspected terrorists who are not in the United States. The ultimate aim is to collect sufficient information on suspected terrorists that will prevent them from entering the United States. When necessary, the task force locates, detains, removes, or prosecutes these individuals. The FBI is also responsible for intelligence collection on and investigation of purely domestic terrorist organizations and identities.

International and domestic intelligence gathered on a known or reasonably suspected international terrorist is then provided to the Office of the Director of National Intelligence's NCTC, which

centralizes terrorism-related intelligence through its administration of TIDE. The NCTC then exports terrorist identity information from TIDE to the Department of Justice's TSC, which serves as a central repository for this information through its administration of the TSDB. Terrorist identifiers based purely on domestic terrorism information gathered by the FBI are directly nominated to the TSDB, with the primary purpose of disseminating terrorist identity information to support the terrorist watch-listing needs of federal, state, local, and international agencies.

Department of State Visa Refusals and Revocations Block Foreign Terrorists From Boarding International Flights

Department of State nonimmigrant visa issuance overseas, informed by terrorism-related intelligence collection, is one of the first operational components in the broader aviation security cycle. Consular officers in the field who process visa applications conduct name checks using CLASS. When CLASS indicates a terrorism-related lookout based on exported TSDB records, it signals the consular officers to contact the Bureau of Consular Affairs' Visa Office to obtain a Security Advisory Opinion regarding the visa applicant.

Security Advisory Opinions Confirm Identity and Any Possible Derogatory Information

When the Visa Office receives a request for a Security Advisory Opinion, two determinations are made. First, the Visa Office, in conjunction with the TSC, confirms that the identity of the applicant matches the TSDB and underlying TIDE record. Second, when the individual's identity is confirmed, the Visa Office reviews the derogatory information on the individual, if any, and advises the consular officer regarding visa eligibility based on the *Immigration and Nationality Act of 1952*, as it relates to terrorism.¹⁴

Additionally, when the Department of State discovers derogatory information on an individual after a visa has been issued, such as the creation of a new TIDE record or an update to an existing

¹⁴ Public Law 82-414 (June 27, 1952), as amended; 8 U.S.C. § 1182(a)(3)(B)(i)(IX).

TIDE record, the Bureau of Consular Affairs can prudentially revoke the visa, forcing the individual to reapply and submit to another full review process. Although the Department of State's focus regarding visa issuance is on admissibility into the United States, its comprehensive visa refusal and revocation procedures also keeps individuals denied visas for terrorism-related reasons from boarding aircraft bound for the United States.

Efforts to Address Potential Visa Waiver Program Security Gaps

One potential security gap not addressed in the visa process stems from foreign nationals eligible for participation in the Visa Waiver Program (VWP). The VWP enables foreign nationals from 35 designated countries to apply for admission to the United States for 90 or fewer days as nonimmigrant visitors, for business or pleasure, without first obtaining a visa. In response to this risk, CBP implemented the Internet-based Electronic System for Travel Authorization program to screen VWP applicants before they travel to the United States. This process became mandatory in January 2009, pursuant to Section 217 of the *Immigration and Nationality Act of 1952*, as amended by Section 711 of the *Implementing Recommendations of the 9/11 Commission Act of 2007*, which required DHS to implement an electronic travel authorization system and other measures to enhance the security of the VWP.¹⁵ These travelers are required to apply for and receive an approved travel authorization via the Electronic System for Travel Authorization to board a commercial aircraft or vessel bound for the United States. Applications are preferred within 72 hours prior to intended travel, although immediate eligibility determinations can be made in most cases.

Once an Electronic System for Travel Authorization application has been successfully completed and submitted online, the application is vetted against appropriate law enforcement and terrorism databases. Individuals who are denied travel authorization for any reason will not be allowed to board and will subsequently be funneled back into the visa process, where they will have to apply to the Department of State for a nonimmigrant

¹⁵ Public Law 82-414 (June 27, 1952), as amended, and Public Law 110-53 (August 3, 2007), respectively.

visa. Additionally, an authorization from this program, which is similar to a visa, is an allowance for travel to a U.S. port of entry and not a guarantee of admission into the United States.

CBP Security Efforts Identify Potential Threats to International Aviation Prior to Departure and Other Threats Upon Arrival

Beyond the Electronic System for Travel Authorization program, CBP engages in a number of security activities that contribute to international and domestic aviation security. These activities take place before international passengers board an aircraft to travel to the United States, and after passengers arrive at U.S. ports of entry.

National Targeting Center–Passenger Assesses Risk for All International Travelers and Assists Other CBP Processes

The National Targeting Center–Passenger (NTC–P) centralizes and coordinates CBP’s anti-terrorism targeting of international passengers mission. The NTC–P processes all terrorism-related encounters using automated watch list matching. The latest requirements of the Advance Passenger Information System (APIS) further enhance the NTC–P’s capabilities. As of December 2008, APIS requires, depending on mode of submission, that commercial air carriers, as well as private aircraft, submit certain passenger information to CBP for vetting in advance of flight departure. The modes of submission are either 30 minutes prior to securing the aircraft for departure for APIS data submitted in batches, or no later than securing the aircraft doors for departure for data submitted in real-time using APIS Quick Query. Despite these minimum requirements, CBP encourages commercial air carriers to submit APIS information up to 72 hours in advance of the flight’s scheduled departure.

Overseas, CBP Representatives Use Vetting Information to Facilitate Denial of Boarding

CBP representatives overseas, as part of the Immigration Advisory Program, use targeting information from the NTC–P’s terrorism vetting operations to assist in preventing potential terrorists from

boarding commercial aircraft destined for the United States. Under the program, officers posted at foreign airports take terrorism-related targeting results, as well as other passenger information, and determine which individuals will be ineligible to enter the United States upon arrival at a port of entry. CBP officers will make “no board” recommendations to commercial air carriers and host governments regarding these passengers. These recommendations are generally heeded by commercial air carriers and foreign governments, as the carrier may bear the cost of the return trip for an individual refused entry into the United States. The recommendations also prevent known or reasonably suspected terrorists, even those who are not on the Selectee list, from boarding an aircraft to the United States.

CBP Admissibility Determinations at U.S. Ports of Entry Prevent Potential Terrorists From Entering the United States

Under the authority of the *Immigration and Nationality Act of 1952*, CBP uses its immigration inspection authority at U.S. ports of entry to examine foreign nationals and U.S. citizens, as well as their personal property, prior to determining admissibility.¹⁶ CBP officers are authorized to conduct a number of inspection activities, including questioning under oath and detailed examinations of individuals, luggage, vehicles, and documents. A warrant is not required to conduct these activities.

Officers rely on these physical searches, their experience in observing and assessing traveler behavior, and documents to determine who is or is not admissible to the United States. In addition, at U.S. ports of entry CBP officers have access to CBP’s system of law enforcement databases to conduct searches and obtain previously generated targeting information to determine the identity and nationality of each applicant seeking admission. Combined, these tools prevent the entry of ineligible foreign nationals such as criminals, terrorists, and drug traffickers,

[REDACTED]

As such, CBP’s immigration inspection authority

¹⁶ Public Law 82-414 (June 27, 1952), as amended; 8 U.S.C. § 1225.

prevents foreign known or reasonably suspected terrorists who were not already barred from boarding an aircraft to the United States from entering the country, thereby precluding domestic travel.

Additional TSA and Commercial Air Carrier Security Activities Mitigate Potential Threats to Aviation Posed by Passengers, Regardless of No Fly or Selectee Status

Although TSA's Secure Flight program screens passenger information against only the No Fly and Selectee subsets of the TSDB, TSA and commercial air carriers employ various passive and active security measures that mitigate potential vulnerabilities posed by individuals, regardless of watch list status. These airport security activities include behavior detection, computer-based analysis of reservation information by commercial air carriers, passenger screening, more extensive secondary passenger screening, random and deterrent-based screening of passengers after initial screening, law enforcement operations to physically secure aircraft while in-flight, and additional watch list screening flexibility within the Secure Flight program.

Certain Security Considerations Allow Secure Flight to Screen Against Expanded Subsets of the Terrorist Screening Database

The Secure Flight program has the flexibility to screen against the full TSDB, as well as other intelligence or law enforcement databases. This capability is responsive to the 9/11 Commission's recommendation that TSA use "the larger set of watch lists maintained by the federal government" for aviation screening. Implementing expanded screening would not be arbitrary; instead, it would be based on credible intelligence or law enforcement information, such as TSA learning that a flight on a particular route may be subject to an increased security risk. In this situation, TSA would have the ability to focus its expanded watch list screening on that particular route or departure and arrival airports. TSA is currently defining the mechanism and process through which it will assess security conditions where expanded watch list screening would be prudent.

Computer-Assisted Passenger Prescreening System Analyzes Trends in Reservation Data and Provides Additional Screening for Potential Terrorists

Watch list screening is supplemented by the Computer-Assisted Passenger Prescreening System (CAPPS), a computer-based system that analyzes reservation information for certain travel behaviors associated with threats to aviation security. Reservation information used for this analysis may include a passenger name,

Although TSA provides program oversight, CAPPS is operated by individual commercial air carriers. The CAPPS program is embedded in each air carrier's reservation system.

Security Measures at Airports Contribute to Aviation Security, Irrespective of Watch List Screening

Transportation Security Officers (TSO) stationed at more than 450 airports across the United States screen more than 2 million passengers daily. Every passenger is required to be screened before entry into sterile areas of an airport—the controlled portion of an airport that is only accessible by screened or authorized individuals. Primary passenger security screening generally involves travelers, airport employees, or flight crew walking through a metal detector and having their carry-on baggage x rayed. These screening efforts apply to all who enter the sterile area, regardless of watch list status.

Secondary passenger security screening is conducted when TSOs, law enforcement officers, Behavior Detection Officers, or other TSA officials indicate that it is warranted; a passenger is a match to the Selectee watch list; or CAPPS behavioral analysis has flagged a passenger. Secondary screening may also occur as a result of random selection or detection of a suspicious object in the person's possession or in carry-on items during primary screening. Secondary passenger screening involves hand-wanding with a portable metal detector, and may include a full-body pat-down inspection or voluntary whole-body imaging with newer technology that visually screens travelers. A passenger's carry-on

baggage is generally opened and examined, as well as inspected with a machine that detects traces of explosives.

Passenger security screening is further enhanced by TSA's Screening Passengers by Observation Techniques program. Behavior Detection Officers are stationed near security checkpoints and trained to detect behaviors exhibited by individuals that may be indicative of a person who poses a possible threat to aviation or transportation security. Travelers are observed for involuntary physical and physiological reactions that people exhibit in response to a fear of being discovered. Behavior Detection Officers may also casually speak with an individual to further ascertain possible causes for a stress reaction. Individuals exhibiting specific observable behaviors and subconscious actions that indicate a high stress level, fear, or deception may be referred for secondary passenger screening. When warranted, law enforcement officers may also conduct more detailed questioning of passengers.

In the sterile area, random screening as part of TSA's Aviation Direct Access Screening Program occurs at gates and can include checking passenger identification and boarding passes, conducting physical searches of carry-on baggage, and using handheld explosive detection units. Since these checks are unannounced, it is more difficult for terrorists to predict the type and nature of security at any one airport. This security measure can also be adjusted to accommodate law enforcement or intelligence-based elevated threats at specific airports or to specific flights.

Federal Air Marshal Service Routine and Special Mission Coverage of Flights Mitigates Potential Threats

TSA's FAMS provides routine coverage on high-risk U.S. commercial air carrier flights, both domestic and international, which are identified using intelligence-driven and risk-based analyses. Beyond routine coverage, FAMS conducts Special Mission Coverage to support other law enforcement agencies and their activities.

Special Mission Coverage is sometimes based on intelligence information not specific to an individual, which results in coverage for a specific flight or route. Although the first priority of FAMS is the security of the aircraft, passengers, and crew, Special Mission Coverage is also used for surveillance as a collateral law enforcement function, with most surveillance requests coming from the FBI. Surveillance contributes to tracking the movements of criminals and subjects of interest.

Use of the FBI's National Crime Information Center Database Provides Additional Intelligence on Potential Terrorists

If a known or reasonably suspected terrorist gains entry to the United States, domestic terrorist watch list screening contributes to domestic investigative and intelligence activities, even when individuals are not on the No Fly or Selectee list. One watch-listing mechanism is the VGTOF subset of the National Crime Information Center database. Anytime a National Crime Information Center database search results in a match to a known or reasonably suspected terrorist, this information is relayed to the TSC. This is also true for encounters as a result of any watch list screening activity, such as a TECS or CLASS match. When the individual is the subject of a terrorism investigation, units within the FBI coordinate with the case agent in charge of the investigation. Encounter information is also added to TIDE records. The intelligence gathering cycle and its feedback into the national watch-listing architecture ensures that individuals are correctly watch-listed, which reflexively secures our commercial aviation system.

Conclusion

Potential threats to aviation security will always exist, regardless of efforts taken to eliminate all possible sources of risk. However, comprehensive, interagency security measures, which form the components of a larger aviation security cycle, help mitigate potential vulnerabilities to commercial aviation. The No Fly list is successful in ensuring that [REDACTED] do not fly. The Selectee list further assists in ensuring [REDACTED] are subject to additional physical screening.

Additionally, individuals listed in the consolidated TSDB who were encountered but not included on the No Fly and Selectee lists were not a threat to commercial aviation, and appropriately were not included on the watch lists according to existing criteria. Furthermore, although TSA uses only a limited subset of the TSDB to prescreen passengers, collateral security measures by the Department of State and CBP ensure that all known and reasonably suspected terrorists are screened prior to boarding an aircraft bound for or departing from the United States. These foreign passengers may be denied admission into the country, but CBP cannot prevent the entry of U.S. citizens or lawful permanent residents into the United States. Various TSA security measures also contribute to aviation security, regardless of an individual's watch list status. Lastly, although domestic watch list screening associated with commercial aviation only occurs for individuals on the No Fly and Selectee lists, law enforcement efforts fill this gap by investigating potential terrorists. These efforts further protect aviation security by feeding valuable intelligence and information on the domestic activities of potential terrorists back into the watch-listing process.

Appendix A Purpose, Scope, and Methodology

In response to a congressional mandate in the *Department of Homeland Security Appropriations Act of 2008* (Public Law 110-161, Division E), we assessed whether potential vulnerabilities exist to the commercial aviation system, as the Secure Flight program screens passenger names against only the No Fly and Selectee subsets of the TSDB, rather than the entire TSDB. Specifically, our objective was to determine whether potential vulnerabilities to the aviation system exist as a result of screening commercial air carrier passenger names against a subset of the TSDB, instead of the entire database.

We reviewed the watch list criteria and compositions of the No Fly and Selectee lists and the full consolidated TSDB. We also reviewed the difference between the criteria for inclusion on the No Fly and Selectee lists and criteria for inclusion in the full TSDB.

We interviewed representatives from federal agencies involved specifically in aviation security and watch list maintenance, including TSA, CBP, FAMS, DHS' Screening Coordination Office, U.S. Immigration and Customs Enforcement, U.S. Department of State, Bureau of Consular Affairs, U.S. Department of Justice, FBI, TSC, and the Office of the Director of National Intelligence, NCTC.

Additionally, we analyzed terrorism-related encounter data provided by CBP's NTC-P and the U.S. Department of State's Bureau of Consular Affairs, from June to August 2007, which was selected as representative of the highest volume months for international travel to the United States. We refined the data by removing duplicate encounter records and encounters not associated with a TIDE record. We then matched the encounters against the No Fly and Selectee lists for the same period, provided by TSA's Office of Intelligence, to identify individuals on those lists at the time of their encounter. Any individuals identified on the No Fly or Selectee list were removed from the sample. We further eliminated the bulk of CBP records representing individuals admitted without incidence and certain other records not related to immigration inspection activities. With this sample of individuals who had TIDE records, but were not on the No Fly or Selectee list, we examined each TIDE record to determine whether:

Appendix A Purpose, Scope, and Methodology

- The individual should have been on the No Fly or Selectee list, based on the July 2006 No Fly and Selectee criteria and implementation guidance at the time of the encounter;
- The individual would be on the No Fly or Selectee list now, based on the revised June 2008 No Fly and Selectee criteria and implementation guidance; and
- The individual should be on the No Fly or Selectee list for any reason, but is excluded from those lists due to insufficiencies in the No Fly and Selectee criteria and implementation guidance.

We also reviewed applicable legislation, regulations, directives, policies, operating procedures, and official guidance documents and manuals. In addition, we studied work previously performed by our office in this and associated areas, as well as the work conducted by GAO, U.S. Department of Justice Office of Inspector General, U.S. Department of State Office of Inspector General, and the Office of the Director of National Intelligence Office of Inspector General.

Although we focused on the potential vulnerabilities to the commercial aviation system caused by the Secure Flight program's intention to screen commercial air carrier passenger names against a subset of the consolidated terrorist watch list, GAO has conducted other reviews of the program. In the past, GAO highlighted numerous problems with the development of Secure Flight and identified challenges that TSA continues to face in implementing the program. Our report does not duplicate GAO's previous work.

Our fieldwork began in March 2008 and concluded in September 2008. We initiated this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspections*, issued by the President's Council on Integrity and Efficiency.

Appendix B
TSA Management Comments to the Draft Report

SENSITIVE SECURITY INFORMATION

Office of the Assistant Secretary

U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 22202-4220

MAR 17 2009



Transportation
Security
Administration

INFORMATION

MEMORANDUM FOR: Richard L. Skinner
Inspector General
Department of Homeland Security

FROM: Gale D. Rossides *Gale D. Rossides*
Acting Administrator

SUBJECT: Transportation Security Administration's Response to the U.S. Department of Homeland Security (DHS) Office of Inspector General (OIG) Draft Report "Role of TSA's No Fly and Selectee Lists in Securing Commercial Aviation - Sensitive Security Information (SSI)," January 2009

Purpose

This memorandum constitutes the Transportation Security Administration's (TSA) response to the DHS OIG draft report "Role of TSA's No Fly and Selectee Lists in Securing Commercial Aviation - Sensitive Security Information (SSI)," January 2009. TSA appreciates the opportunity to review and provide comments to your draft report.

Background

At the request of the House and Senate Appropriations Subcommittees on Homeland Security, OIG reviewed whether potential vulnerabilities exist in commercial air carrier passenger prescreening. Specifically, OIG was asked to review the TSA's Secure Flight program's intention to prescreen passenger names against only the No Fly and Selectee lists, rather than the entire Government terrorist watch list database. OIG determined the: (1) watch list criteria and compositions of the No Fly and Selectee lists and the full consolidated Terrorist Screening Database (TSDB); (2) differences between the criteria for inclusion on the No Fly and Selectee lists and the full TSDB; and (3) potential vulnerabilities to the aviation system caused by prescreening commercial air carrier passenger names against the No Fly and Selectee lists, instead of the full TSDB.

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~~SENSITIVE SECURITY INFORMATION~~

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Appendix B TSA Management Comments to the Draft Report

~~SENSITIVE SECURITY INFORMATION~~

As a result of its review, OIG found that although the use of the No Fly and Selectee lists are largely successful in identifying potential terrorists that could threaten commercial aviation, some individuals are not included on the lists who may also present vulnerabilities to aviation security. However, the passenger prescreening against terrorist watch lists proposed by the Secure Flight program is only one component of a larger security cycle that protects the Nation's commercial aviation system. International and domestic security activities within and outside DHS, such as intelligence gathering, law enforcement investigations, visa issuance, and border protection, mitigate potential vulnerabilities not addressed by the Secure Flight program and enhance commercial aviation security overall.

Discussion

TSA appreciates the work OIG has done in this review and agrees with OIG's analysis and conclusion that the No Fly and Selectee Lists successfully identify terrorists who pose a threat to aviation security. TSA also agrees with OIG that other security measures address potential vulnerabilities not addressed by the Secure Flight program and that these security measures enhance aviation security.

The Role of Terrorist Watch Lists in Aviation Security

TSA's aviation security strategy relies upon an overlapping system of multiple layers of security. Key to this system is the use of intelligence to both develop countermeasures against terrorist threats and to intervene directly when threats become apparent. One of the most important tools in the fight against terrorism is the U.S. Government's consolidated Terrorist Screening Database (TSDB) managed by the Terrorist Screening Center (TSC).

Prior to 9/11, information about known or suspected terrorists was dispersed throughout the U.S. Government, and no single Agency was charged with consolidating it and making it available for use in terrorist screening. Under Homeland Security Presidential Directive (HSPD) 6, the TSC now provides "one-stop shopping" so that every Government agency is using the same TSDB—whether it is TSA, a U.S. consular official issuing visas overseas, or a State or local law enforcement officer on the street. The consolidated system allows Government agencies to run name checks against one comprehensive database with the most accurate, up-to-date information about known and suspected terrorists.

The consolidated system provides the critical nexus between the work of the intelligence and law enforcement communities and the rest of the counterterrorism community. Our partners in the law enforcement and intelligence communities work tirelessly and in some cases under great physical danger to identify individuals who pose a terror threat. It would be dangerous and negligent not to use this information to our advantage. TSA is constantly adapting to the ever-changing threat environment and improving our people, processes, and technology to detect and deter threats. As important as it is to detect threat objects, it is imperative that we use intelligence to aid in the identification and interception of the people who would do us harm.

Terrorist watch lists keep legitimate terror threats off airplanes every day, all over the world.

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Appendix B TSA Management Comments to the Draft Report

SENSITIVE SECURITY INFORMATION

The lists are reserved for known or suspected terrorists who have reached a threshold where they should not be allowed to fly or should receive additional scrutiny before boarding an aircraft. Using the No Fly and Selectee watch lists, TSA can quickly evaluate passengers to determine if they have a known or suspected link to terrorism or pose a threat to national security and to prevent passengers with known or suspected links to terrorism from boarding aircraft.

The Role of Watch List Nominating Criteria

The No Fly and Selectee list inclusion criteria were initially established in October 2004 by the Homeland Security Council. The council is a cabinet-level body that coordinated homeland security-related activities for the Federal Government and promotes effective homeland security policy development and implementation. The nomination criteria were subsequently updated by the Homeland Security Council on February 8, 2008. Under this system, members of the law enforcement and intelligence community submit nominations to the TSC, generally through the National Counterterrorism Center. Nominations are processed and adjudicated by the TSC with support from TSA.

The nomination criteria are strictly applied to each individual nomination. As a result, only individuals with known or suspected links to terrorism or are otherwise risks to homeland or national security are placed on the No-Fly or Selectee lists. This ensures that TSA concentrates directly on known and suspected risks to aviation in passenger screening.

Conclusion

TSA appreciates the work OIG has done in this review and agrees with OIG's analysis and conclusion that the No Fly and Selectee Lists successfully identify terrorists who pose a threat to aviation security. We look forward to working with OIG in future engagements. TSA's response to OIG's recommendation follows.

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Appendix B
TSA Management Comments to the Draft Report

SENSITIVE SECURITY INFORMATION

**Transportation Security Administration's Response
Department of Homeland Security Office of Inspector General's Draft Report
Role of TSA's No Fly and Selectee Lists in Securing Commercial Aviation, January 2009**

Recommendation: Determine whether it is appropriate to [redacted] to No Fly restrictions or additional screening prior to boarding an aircraft.

TSA Concurs in Part: The nomination criteria for each list produced from the TSDB are developed and approved by a multi-agency working group in a process overseen by the Homeland Security Council. Each individual nominated to a terrorist watch list must independently meet the nomination criteria in order to be listed. [redacted] would require an amendment to the nomination criteria.

[redacted] on the No Fly and Selectee Lists, it appears the only effective way to ensure that they are restricted from boarding an aircraft or undergo additional screening would be to add them to the No Fly or Selectee List. This would [redacted] and raises privacy and other concerns. [redacted] listed on the No-Fly and/or Selectee List individually meet the criteria for nomination to either list, they will be placed on the list individually.

TSA will need to explore this issue with other interested agencies to determine whether [redacted] on the No Fly and Selectee Lists to these lists is a prudent step that would enhance security. However, given the issues involved in this recommendation, it is highly unlikely the lists would be [redacted] in this fashion.

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Appendix C
NCTC Management Comments to the Draft Report



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DIRECTOR
NATIONAL COUNTERTERRORISM CENTER
Washington DC 20505

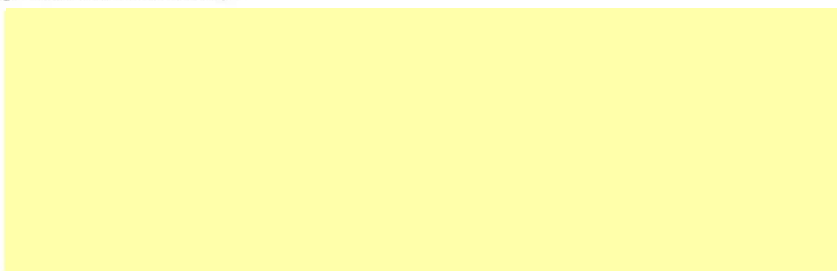
NCTC-2009-0039

MEMORANDUM FOR: Mr. Carlton I. Mann
Assistant Inspector General for Inspections
U.S. Department of Homeland Security

SUBJECT: (U//FOUO) National Counterterrorism Center (NCTC) Comments
on DHS Draft IG Report

(U//FOUO) My staff has reviewed, with interest, your office's *Draft Report: Role of TSA's No Fly and Selectee Lists in Securing Commercial Aviation—Sensitive Security Information (SSI)*. In addition, the NCTC officers responsible for managing the Terrorist Identities Datamart Environment (TIDE), along with an NCTC attorney, met with members of your inspection team recently for a cordial and productive discussion on the draft report. Their comments appear in the attachment.

(U//FOUO) NCTC is comfortable with the thrust of the report and has provided several technical recommendations. On two points of concern raised respectively, in your letter and in the report, I note the following:



- As you requested, NCTC officers are working with the TSC to review the report for sensitivity and, once that review is complete, will comment on appropriateness of public release of any information contained in the report.

(U) Should you have any questions, please contact me.

Michael E. Leiter

13 Feb 09

Date

Attachment:
(U//FOUO) NCTC Comments on DHS Draft IG Report

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Appendix C NCTC Management Comments to the Draft Report

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NCTC Comments on DHS Draft IG Report

(U//FOUO) PAGE 6, PARA 2, last sentence. — “Of the non-terrorist associates contained in TIDE, only spouses and children are exported to the TSC” request sentence be modified to add “non-US Person” in front of spouses and children and add an explanatory statement, such as “in accordance with the INA section 212 (a) (3) (B) (i) (IX) which deems spouses and children excludable from the US under certain criteria. *

*(spouse/child is an alien - and children are under 21 and unmarried)

(U//FOUO) PAGE 7, PARA 4, last sentence — We are now sending photographs with no additional identifiers to the TSC – thus, the “other than photograph” no longer applies in the sentence. Suggest wording such as “biometric data such as a photograph, Iris scan or fingerprint...”

(U//FOUO) PAGE 11, PARA 3, sentence one — Recommend removing the phrase “and the NCTC” from the sentence beginning “Nominating agencies...”
COMMENT: NCTC does not self-nominate to the TSA lists; however, we will coordinate with nominators and/or the TSC to place individuals who qualify for listing but have not been previously nominated for the No Fly or Selectee list.

(U//FOUO) PAGE 11, PARA 4, sentence two — Substitute “eligibility” for “eligibly.”

General comment on sensitivity review — NCTC is coordinating with the TSC to provide comments.

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~~SENSITIVE SECURITY INFORMATION~~

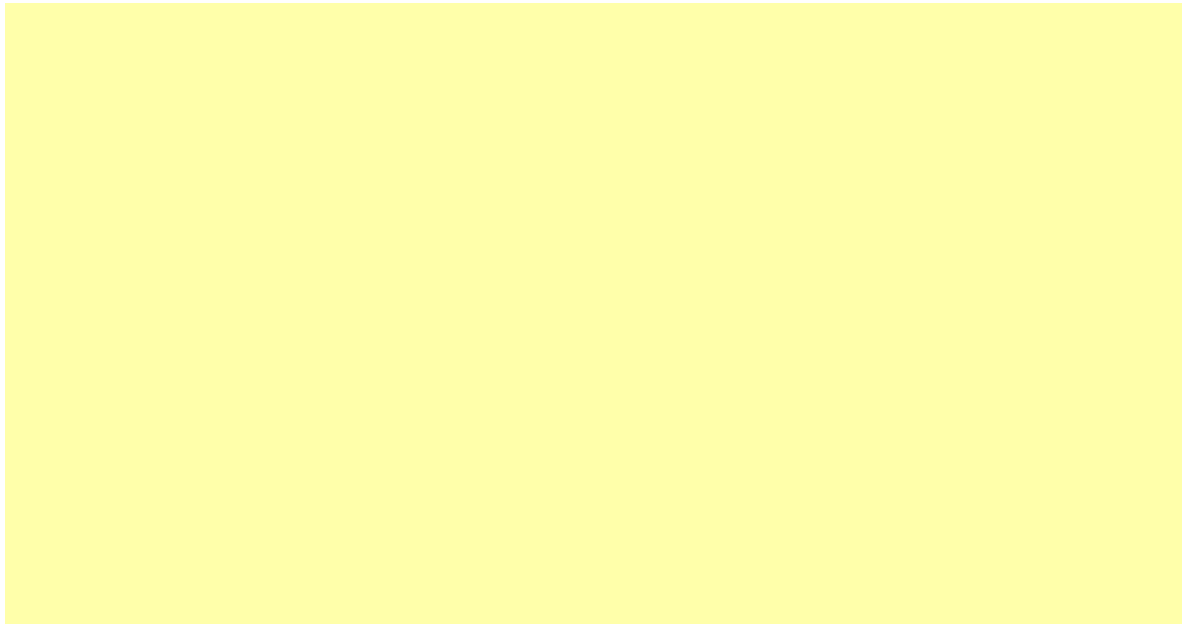
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Appendix D
No Fly and Selectee List Implementation Guidance June 2008

On October 21, 2004, the Homeland Security Council Deputies Committee—which serves as the senior sub-cabinet level interagency forum for consideration of policy issues affecting homeland security—established the initial criteria for the No Fly and Selectee lists. On February 8, 2008, the same committee approved the addition [redacted] criterion to the No Fly list, as provided below.¹⁷

No Fly List:

Any person, regardless of citizenship, who represents a threat of [redacted]



Selectee List:

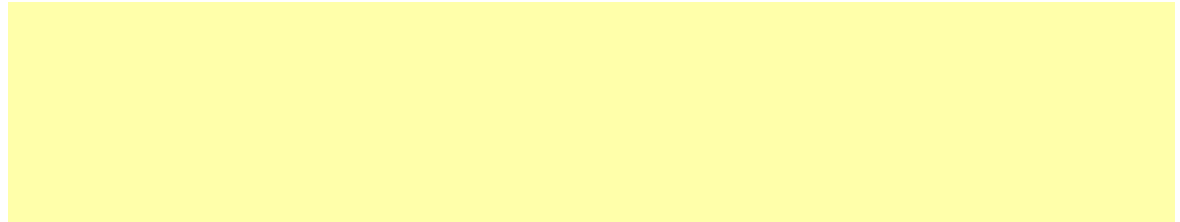
Any person, regardless of citizenship, in the TSDB who does not meet the criteria to be placed on the No Fly list and who is:



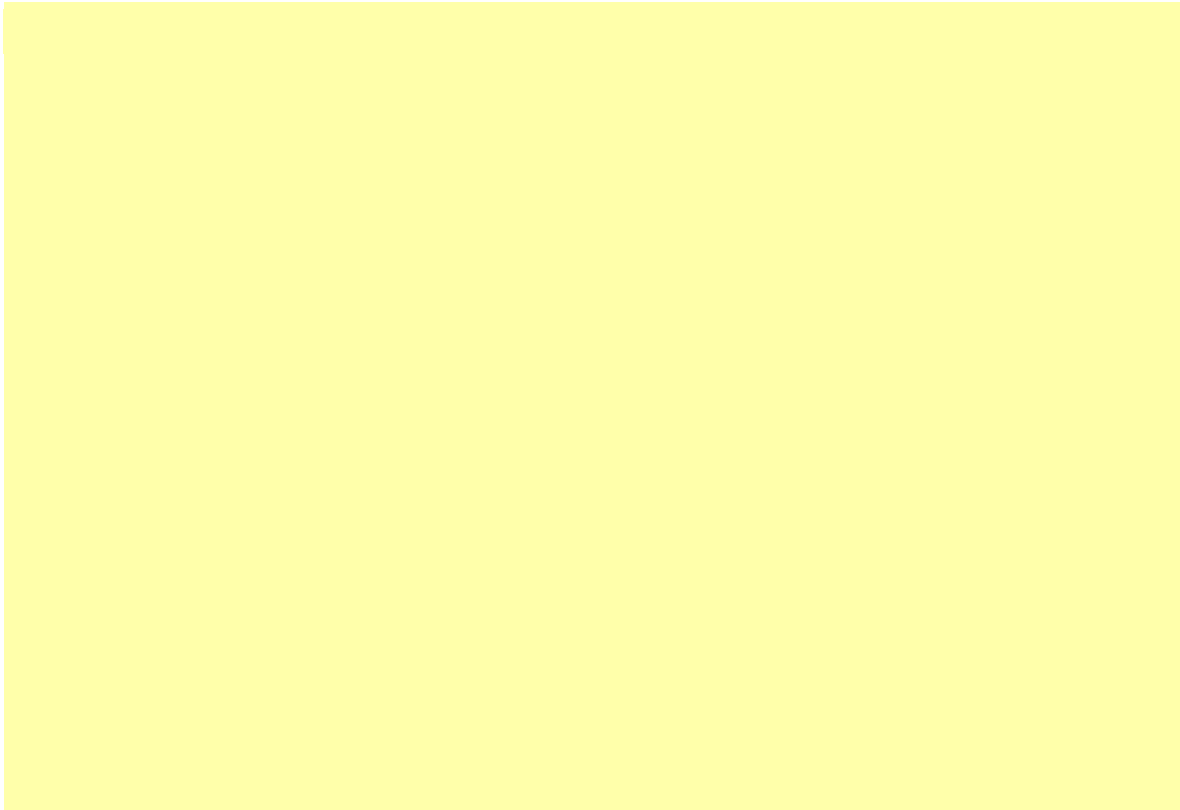
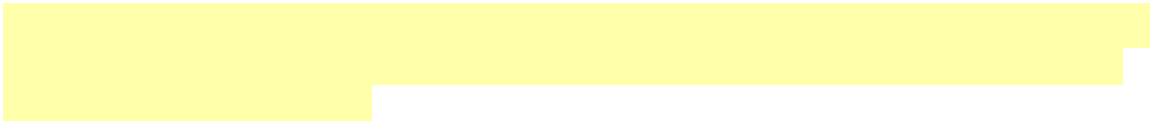
¹⁷ Original text of the No Fly and Selectee List Implementation Guidance, as transmitted to DHS by the TSC in June 2008.



Appendix D
No Fly and Selectee List Implementation Guidance June 2008



Since January 2005, the watch-listing community has gained extensive experience with all aspects of the No Fly list, to include nominations, quality assurance, encounters, downgrades, and litigation. The No Fly and Selectee list guidance set forth below is neither intended to be determinative, nor intended to serve as a checklist. Rather, it is intended to guide the watch-listing community in assessing whether the established criteria is satisfied for a specific record, based on the totality of available information.



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**Appendix D
No Fly and Selectee List Implementation Guidance June 2008**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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**Appendix D
No Fly and Selectee List Implementation Guidance June 2008**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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**Appendix D
No Fly and Selectee List Implementation Guidance June 2008**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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**Appendix D
No Fly and Selectee List Implementation Guidance June 2008**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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Appendix D
No Fly and Selectee List Implementation Guidance June 2008

[Redacted]

[Redacted]

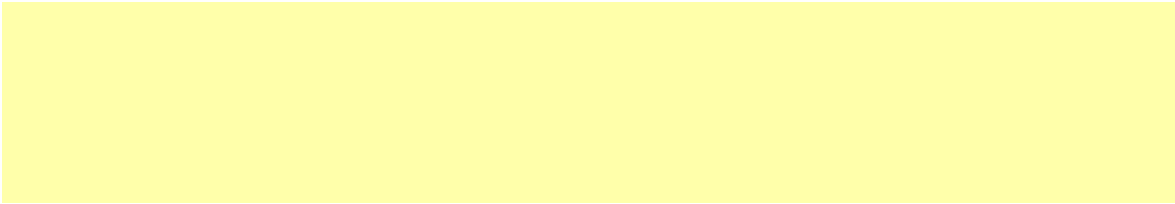
Not suitable for either the No Fly or the Selectee List:

[Redacted]

[Redacted]

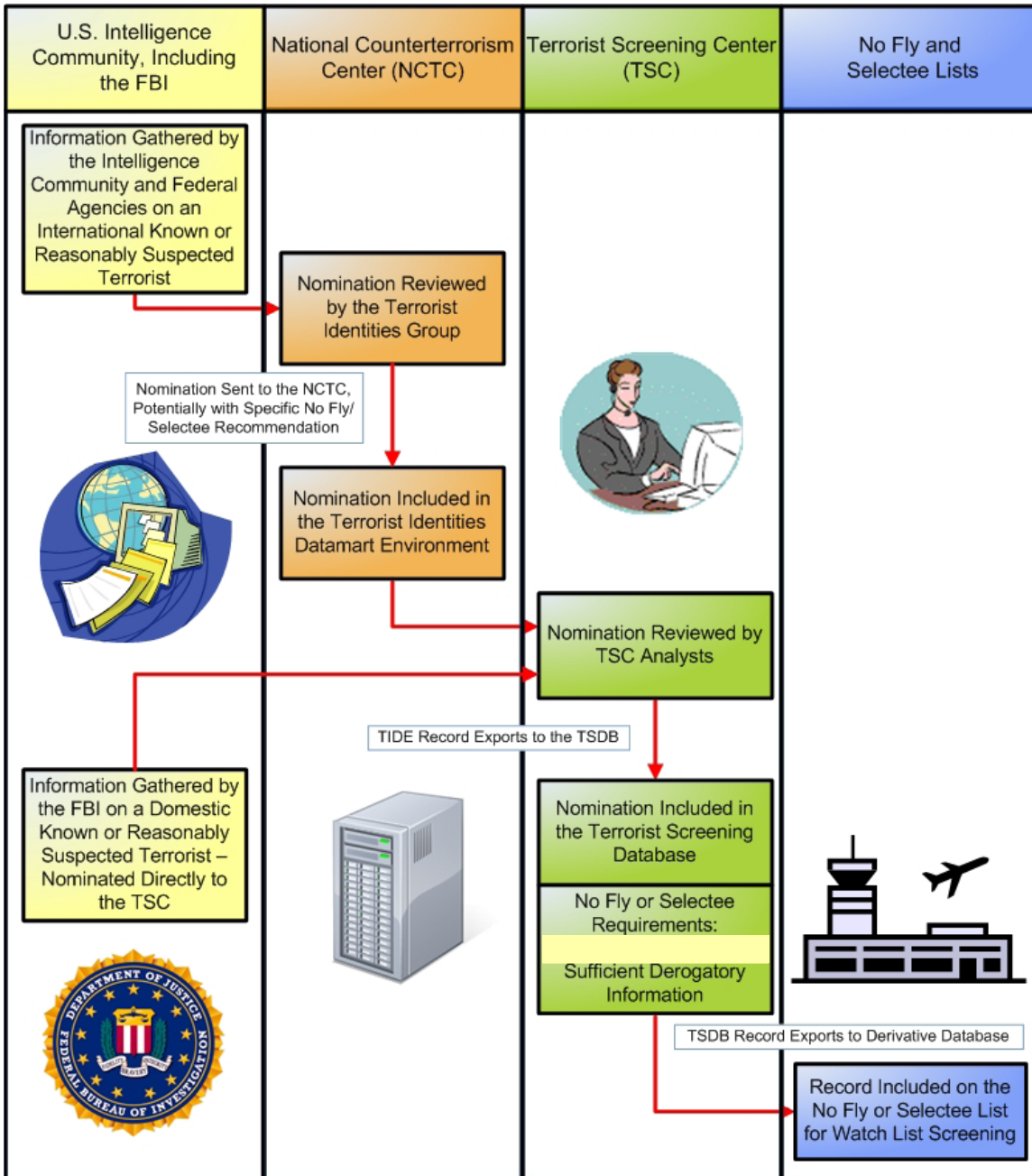
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Appendix D
No Fly and Selectee List Implementation Guidance June 2008



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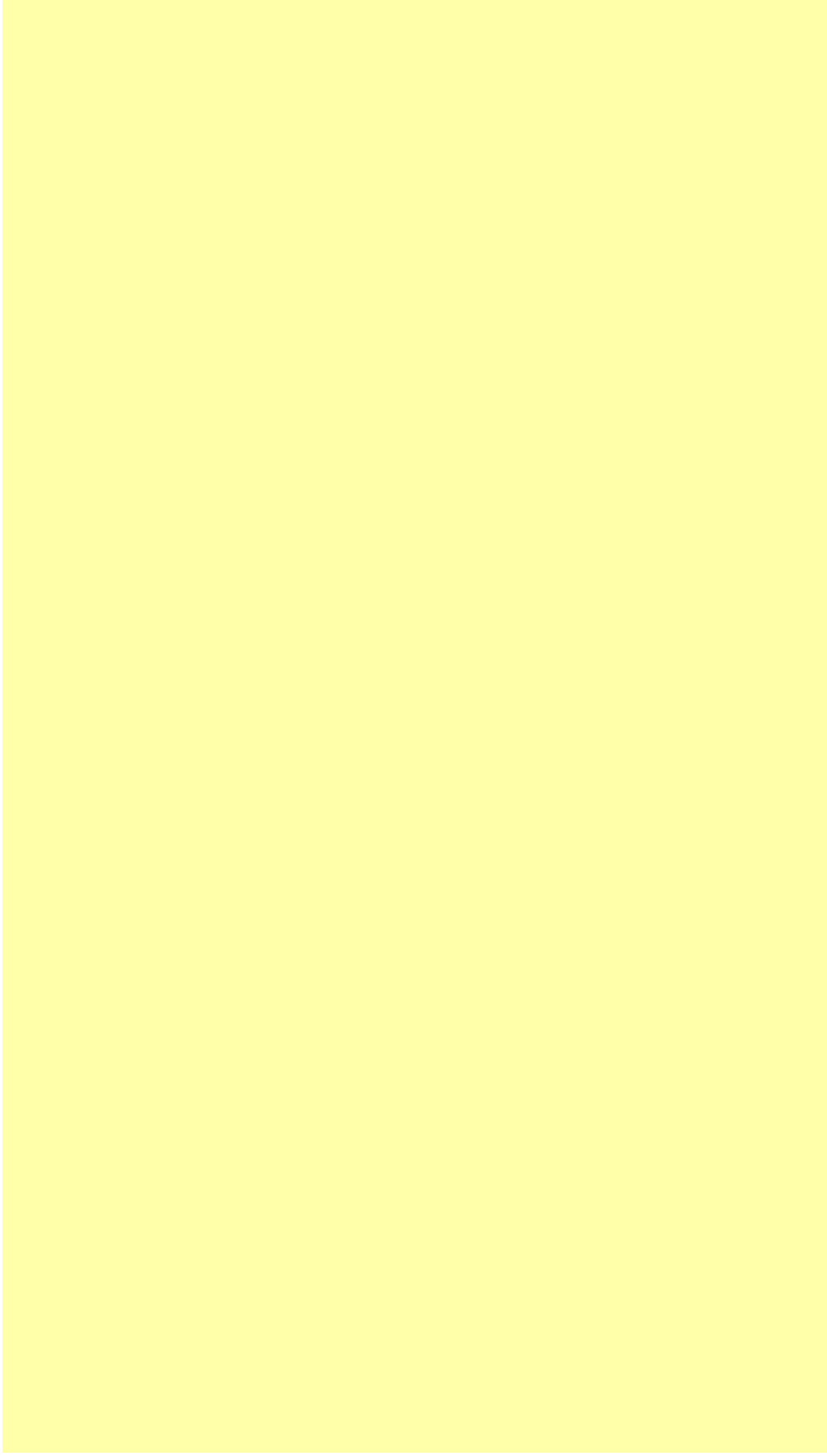
Appendix E No Fly and Selectee List Nomination Process



Source:
OIG Analysis

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**Appendix F
Securing Commercial Aviation Through Intelligence Gathering, Watch List Screening, Law Enforcement,
and Other Programmatic and Operational Efforts**



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Appendix G
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