

August 2008

INTERNATIONAL  
MARRIAGE BROKER  
REGULATION ACT  
OF 2005

Agencies Have  
Implemented Some,  
but Not All of the  
Act's Requirements





**GAO**  
Accountability Integrity Reliability

# Highlights

Highlights of GAO-08-862, a report to congressional committees

## Why GAO Did This Study

The International Marriage Broker Regulation Act of 2005 (IMBRA) was enacted to address issues of domestic violence and abuse against noncitizens (beneficiaries) married or engaged to U.S. citizens (petitioners) who have petitioned for them to immigrate to the U.S., including those who met through an international marriage broker (IMB). IMBRA mandated that GAO study the act's impact on the visa process for noncitizen spouses and fiancé(e)s. This report addresses the extent to which the U.S. Citizenship and Immigration Services (USCIS), a component of the Department of Homeland Security (DHS); the Department of State (DOS); and the Department of Justice (DOJ) have implemented IMBRA, and the extent to which USCIS and DOS have collected and maintained data for this GAO report as required by IMBRA. To address these objectives, GAO reviewed the act and related legislation, analyzed IMBRA implementation guidance and available data on applications filed, and interviewed officials at USCIS, DOS, and DOJ.

## What GAO Recommends

GAO recommends that USCIS develop a timeline for finalizing the pamphlet and mechanism to ensure all petitioners are checked for prior filings and that all beneficiaries are notified about previously approved petitioner filings, and that DHS work with DOS and DOJ to develop a framework for prosecuting IMBRA violations. USCIS and DHS concurred with GAO's recommendations.

To view the full product, including the scope and methodology, click on GAO-08-862. For more information, contact Richard M. Stana at (202) 512-8777 or stanar@gao.gov.

# INTERNATIONAL MARRIAGE BROKER REGULATION ACT OF 2005

## Agencies Have Implemented Some, but Not All of the Act's Requirements

### What GAO Found

USCIS, DOS, and DOJ have implemented two of seven key IMBRA requirements identified by GAO, but five key provisions intended to provide beneficiaries with information about the petitioners seeking to bring them to the United States have yet to be completed. First, although IMBRA requires DOS to mail a copy of the approved petition to each beneficiary, the agency is not currently fulfilling this requirement. Second, IMBRA limits the number of petitions a person may file for a noncitizen fiancé(e) unless USCIS grants a waiver of the filing limits. However, USCIS officials told GAO that they do not check all petitioners against records to determine if a petitioner has previously filed a fiancé(e) petition. USCIS adjudicators are required to check the record if the petitioner self-attests that he or she has previously filed a petition. By limiting its checks to those petitioners who acknowledge prior filings, USCIS increases the risk that it will approve more fiancé(e) petitions than allowed under IMBRA. Third, IMBRA mandates that after two approved petitions, upon filing of a third petition within 10 years of the first, USCIS is to notify both the petitioner and beneficiary of previously approved petitions filed by the petitioner. USCIS officials told GAO that they no longer try to notify beneficiaries because of the difficulty in obtaining accurate overseas mailing addresses. Thus, beneficiaries are left without all required information for making a decision about the person petitioning on his or her behalf. USCIS officials told GAO that they plan to ask DOS to notify beneficiaries during their visa interview with a DOS consular officer. Fourth, the requirement to provide beneficiaries with a pamphlet that discusses the visa application process and available resources if the beneficiary encounters domestic violence or abuse is not being met. USCIS has drafted the pamphlet, but has not established time frames for finalizing the pamphlet. Until the pamphlet is finalized, translated, and distributed, USCIS increases the risk that beneficiaries are not being made aware of their rights or the resources that are available should they encounter domestic violence. Lastly, IMBRA establishes federal criminal and civil penalties for IMBs who violate its provisions. Although DOJ has drafted IMBRA-related regulations regarding how civil penalties would be administered, these regulations cannot be finalized until DOJ, USCIS, and DOS decide which agencies will be responsible for investigating, referring, and prosecuting potential IMBRA violations. Until the agencies resolve these issues and establish an enforcement framework, it will be difficult for IMBRA violators to be penalized.

USCIS is collecting and maintaining some of the data for this report as required by IMBRA; however, most of the data are not in a summary or reportable form and other required data have not been collected. For example, GAO could not determine the extent to which petitioners with a criminal history or history of violence have filed petitions because USCIS does not capture this data electronically. USCIS officials told GAO that they are considering modifying their data management system to collect data that is currently not being collected. However, no decisions have been made.

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## Abbreviations

CLAIMS	Computer Linked Application Information Management System
DHS	Department of Homeland Security
DOJ	Department of Justice
DOS	Department of State
EOIR	Executive Office for Immigration Review
INA	Immigration and Nationality Act
IBIS	Interagency Border Inspection System
IMB	international marriage broker
IMBRA	International Marriage Broker Regulation Act of 2005
OMB	Office of Management and Budget
RPM	Regulation and Product Management
USCIS	U.S. Citizenship and Immigration Services

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United States Government Accountability Office  
Washington, DC 20548

August 8, 2008

The Honorable Patrick J. Leahy  
Chairman  
The Honorable Arlen Specter  
Ranking Member  
Committee on the Judiciary  
United States Senate

The Honorable John Conyers, Jr.  
Chairman  
The Honorable Lamar S. Smith  
Ranking Member  
Committee on the Judiciary  
House of Representatives

The Immigration and Nationality Act (INA) allows U.S. citizens (petitioners) to petition for noncitizen fiancé(e)s, spouses, and minor children (beneficiaries) to immigrate to the United States. Some petitioners have criminal histories that could put these beneficiaries at risk of abuse, such as sexual assault.<sup>1</sup> The International Marriage Broker Regulation Act of 2005 (IMBRA)<sup>2</sup> was enacted to address issues of domestic violence and abuse against beneficiaries by petitioners, including those who met their foreign-born spouses through an international marriage broker (IMB).<sup>3</sup> Among other things, IMBRA contains requirements that are intended to ensure that a beneficiary is informed in

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<sup>1</sup>We previously reported that in fiscal year 2005, 420 family-based petitions were filed by convicted sex offenders. Ninety-one of those petitions were filed for noncitizen fiancé(e)s. Sex offender crimes included sexual assault and rape. See GAO, *Immigration Benefits: Circumstances under Which Petitioners' Sex Offenses May Be Disclosed to Beneficiaries*. GAO-06-735 (Washington, D.C.: June 14, 2006).

<sup>2</sup>IMBRA was enacted on January 5, 2006 as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960 (2006). The statute's IMBRA provisions are set forth in sections 831 through 834, and IMBRA citations in this report will identify the appropriate section.

<sup>3</sup>IMBRA generally defines an IMB as a for-profit entity whose principal business is to charge fees for providing dating, matrimonial, matchmaking services, or social referrals between U.S. and foreign national clients by providing personal contact information or otherwise facilitating communication between U.S. and foreign national clients. See IMBRA § 833(e)(4).

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the event that his or her petitioner has a criminal history or a history of filing multiple petitions for fiancé(e)s to immigrate into the United States. U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security (DHS)<sup>4</sup> and the Bureau of Consular Affairs within the Department of State (DOS) play key roles in the disclosure of a U.S. citizen's criminal background information, including sex crimes, to beneficiaries protected by IMBRA. For the purposes of making this disclosure, USCIS must obtain and furnish the petitioner's criminal background information, along with the approved petition, to DOS, which is to forward these materials to the beneficiary by mail. DOS, which is responsible for reviewing beneficiary visa applications for approved petitions for the purpose of issuing a visa, must also disclose the petitioner's criminal background information to the beneficiary during the consular interview. While DOS is responsible for disclosing criminal background information to the beneficiary, IMBRA requires USCIS to inform beneficiaries if a U.S. citizen who has been approved twice before files another fiancé(e) or spouse petition within 10 years of the first filing.

IMBRA also establishes disclosure and other requirements for IMBs to help inform and provide greater assurance for the safety of noncitizen fiancé(e)s who meet their U.S. citizen fiancé(e)s through an IMB. IMBs who violate IMBRA's provisions are subject to federal criminal and civil penalties. IMBRA makes the Department of Justice (DOJ) responsible for the imposition of civil penalties after notice and an opportunity for a hearing.

Section 833(f) of IMBRA mandated that GAO study the impact of IMBRA on the visa process for noncitizen fiancé(e)s, including reporting specific data USCIS and DOS were to collect and maintain for GAO to do its study.<sup>5</sup> Other information IMBRA required GAO to report, such as the number of international marriage brokers doing business in the United States and the extent of brokers' compliance with IMBRA, was not available, and

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<sup>4</sup>Because USCIS is the DHS component generally responsible for carrying out the requirements discussed in this report, our report will generally refer to USCIS rather than DHS, unless otherwise appropriate.

<sup>5</sup>IMBRA requires the Comptroller General to conduct a study on the impact of sections 832 and 833 of IMBRA on the K nonimmigrant visa process. K nonimmigrant visa applicants are a class defined by subparagraph (K) of section 101(a)(15) of the Immigration and Nationality Act to include noncitizen fiancé(e)s or spouses of U.S. citizens, or their minor children. Most K nonimmigrant visa applicants are fiancé(e)s. Our report focuses on the fiancé(e)s; however, spouses and minor children will be mentioned where appropriate.

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therefore we are not able to report such information. In accordance with the congressional mandate and as discussed with the offices of the Chairmen and Ranking Members of the Senate and House Judiciary Committees, this report addresses the following questions:

- To what extent have USCIS, DOS, and DOJ implemented the requirements of IMBRA?
- To what extent have USCIS and DOS collected and maintained data for GAO reporting as required by IMBRA?

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## Scope and Methodology

To determine the extent to which USCIS, DOS, and DOJ implemented the requirements of IMBRA, we reviewed the Act, its legislative history, relevant provisions of the INA, and related legislation, the Adam Walsh Child Protection and Safety Act of 2006<sup>6</sup> which contains provisions that may affect a petitioner's ability to have beneficiaries immigrate. For purposes of this review, we summarized and grouped IMBRA's requirements into seven key areas and identified the actions taken and the actions remaining in each of the key areas. To determine what actions had and had not been taken, we obtained and analyzed pertinent documentation, such as USCIS's and DOS's IMBRA implementation guidance for its adjudicators<sup>7</sup> and consular officers, respectively. We also interviewed cognizant officials at USCIS headquarters and at its California and Vermont Service Centers—the two service centers responsible for processing petitions for alien fiancé(e)s; at DOS, and at DOJ. We interviewed three DOS Consular Affairs Unit Chiefs by telephone and received written responses to our questions from four other Unit Chiefs all of whom were responsible for processing immigrant visa applications, including fiancé(e) visas. These Unit Chiefs were at seven consular posts located in Bangkok, Thailand; Bogotá, Colombia; Ciudad Juarez, Mexico; Guangzhou, China; Ho Chi Minh City, Vietnam; Manila, Philippines; and Moscow, Russia. We chose these posts because they issued about two-thirds of alien fiancé(e) visas in fiscal year 2007. While information we obtained at these locations may not be generalized across all consular posts, because we selected the posts based on the volume of activity, we

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<sup>6</sup>Pub. L. No. 109-248, 120 Stat. 587 (2006).

<sup>7</sup>Adjudicators determine eligibility for various types of immigration benefits, including permission for relatives to immigrate and permission to become U.S. citizens, among other benefits.

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believe the posts provided us with a general overview and perspective on the implementation of IMBRA at the selected posts.

To determine whether USCIS and DOS have collected and maintained data for our report as required by IMBRA, we obtained and analyzed available data for fiscal years 2006 and 2007 on fiancé(e) petitions filed from USCIS's application management system, and on visas issued to fiancé(e)s from DOS's visa database. To determine the reliability of data in USCIS's and DOS's database, we observed how petitioner data are entered into USCIS's data system, reviewed pertinent USCIS and DOS documents, and interviewed relevant USCIS and DOS officials. We determined that the data we used from USCIS and DOS databases were sufficiently reliable for purposes of this report. In addition, we interviewed cognizant officials at DHS/USCIS in headquarters, Washington, D.C.; at the California and Vermont Service Centers, and at DOS. We conducted this performance audit from October 2007 to August 2008, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Results in Brief

USCIS, DOS, and DOJ have implemented some, but not all of the IMBRA requirements that are designed to inform beneficiaries about the persons petitioning for them to immigrate to the United States. Two of seven key IMBRA requirements we identified—the disclosure of petitioner criminal conviction information to beneficiaries and the establishment of a database to track petitioners who have had multiple fiancé(e) or spousal petitions approved—are being implemented by the cognizant agencies, DOS and USCIS. USCIS and DOS also issued IMBRA-related guidance to its USCIS adjudicators and DOS consular officers, respectively. However, the following five key requirements intended to provide beneficiaries with information to enable them to make informed choices and provide certain protections under IMBRA have yet to be fully implemented:

- Under IMBRA, DOS is required to mail to the beneficiary a copy of the petition submitted by the petitioner, which is to include any criminal background information, at the same time it mails the instruction packet regarding the visa application process. Although DOS's guidance does provide for the mailing of criminal background information to beneficiaries, the guidance does not specifically require



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DOS to mail beneficiaries a copy of the approved petitions, as required by IMBRA. The petitions require petitioners to disclose additional information beyond criminal history, such as their marital status and the number of prior petitions filed, approved, and denied. Thus, while DOS' guidance provides for the mailing of the criminal background information, not sending the petitions themselves increases the risk that beneficiaries may not be obtaining relevant non-criminal information about their petitioners that could affect their immigration decision. During the course of this engagement, DOS informed us that it will revise its guidance to its consular officers requiring them to mail the I-129F petition when mailing the instruction packet to beneficiaries.

- IMBRA limits how many times a person may petition for a noncitizen fiancé(e). Unless USCIS grants a petitioner's request for a waiver of the IMBRA filing limits, a person may only petition twice for a noncitizen fiancé(e), with not less than 2 years between the filing of the last approved petition and the current petition. However, USCIS officials told us they do not check every petitioner against their database to determine if the petitioner has previously filed a fiancé(e) petition. Rather, USCIS adjudicators are generally required to check the database if the petitioner self-attests that he or she has previously filed a petition. According to USCIS, checking every name against their database would require a significant amount of vetting to try to determine if the petitioner matches any of those already in the database, although USCIS officials acknowledge that more refined search information could reduce the number of multiple hits. By limiting its checks to those petitioners who acknowledge prior filings, USCIS increases its risk that it will approve more fiancé(e) petitions than allowed under IMBRA. USCIS's reliance on self-attestation not only increases the risk of USCIS approving more petitions than allowed by IMBRA, it also increases the risk that USCIS will not have accurate multiple filer information to disclose to prospective beneficiaries.
- Under IMBRA, USCIS is required to disclose multiple filer information to prospective beneficiaries if the petitioner has had two or more fiancé(e) or spousal petitions approved and files again within 10 years of the first filing. With respect to this disclosure requirement, USCIS officials told us that they attempted to notify beneficiaries as required. However, because of inaccurate addresses, a large number of notifications were returned as undeliverable. USCIS officials said they no longer try to notify beneficiaries directly; instead, officials told us they plan to ask DOS to have its consular officers notify beneficiaries of any previously approved petitions during the consular interview. At

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the time of our review, DOS said it had not held a discussion with USCIS about providing such notification. Until USCIS finalizes a process with DOS to share information about prior petition approvals, beneficiaries will not have all required information for making a decision about the persons petitioning on his or her behalf.

- The requirement to provide beneficiaries with a pamphlet that discusses the visa application process and available resources if the beneficiary encounters domestic violence or abuse is not being met. Although the pamphlet has been drafted and solicitation for public comments announced in the *Federal Register*, USCIS has not established time frames for finalizing the pamphlet. Until finalized, the pamphlet cannot be summarized, translated into foreign languages, or distributed as mandated by IMBRA. According to USCIS officials, ensuring appropriate coordination with various USCIS and DHS components has, in part, led to delays in finalizing the pamphlet. However, until the pamphlet is finalized, translated, and distributed, USCIS increases the risk that beneficiaries are not being made aware of their rights or the resources that are available to them should they encounter domestic violence.
- IMBRA establishes federal criminal and civil penalties for IMBs who violate its provisions. However, DOJ, USCIS, and DOS have yet to establish a framework for investigating, referring, and prosecuting potential IMB violations of IMBRA for civil or criminal enforcement, although the three are currently discussing these issues. While DOJ has drafted regulations regarding the process for assessing any civil penalties, DOJ cannot finalize these regulations until the agencies agree upon an enforcement framework, including which agencies will be responsible for investigating, referring, and prosecuting IMBRA cases. It is important that DOJ, USCIS, and DOS continue their discussions and collaborate to establish such an enforcement framework. Without such, it will be difficult for IMBRA violators to be penalized.

USCIS is collecting and maintaining some of the data as required by IMBRA. However, most of the data USCIS is collecting and maintaining are not in a summary or reportable form, and other required data have not been collected. Although IMBRA calls for both USCIS and DOS to collect and maintain data for us to report, it primarily requires petition-related data. Thus, USCIS would have responsibility for collecting and maintaining this data which consists of 10 reportable data elements. Of the 10 data elements, USCIS collected and maintained complete data for 3 elements, partial data for 3 other elements, and no data for 4 elements. As a result, we could not determine certain things, such as the extent to which

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petitioners with a criminal history or history of violence have filed petitions or been granted waivers of IMBRA's multiple filing limits, because this data was not in a summary or reportable form. USCIS officials told us that they are considering modifying their data management system to collect data that are currently not being collected; however, no decisions have been made.

To improve implementation of IMBRA, we are recommending that the Director, USCIS develop

- a mechanism to check all petitioners for prior K nonimmigrant filings in order to determine if a petitioner exceeds the filing limits established by IMBRA;
- a mechanism, in consultation with the Secretary of State, to notify beneficiaries of the number of previously approved petitions filed by the petitioner; and
- a time frame for finalizing the information pamphlet so that it can be translated and distributed as required by IMBRA.

To help ensure that penalties can be imposed on IMBRA violators as provided for in the law, we recommend that the Secretary of Homeland Security develop

- a framework for the investigation, referral, and prosecution of potential IMBRA violations in consultation with the Secretary of State and the Attorney General.

We provided a draft of this report to the Secretaries of Homeland Security and State and to the Attorney General for comment. We received comments from DHS, which are reprinted in appendix II. DHS concurred with our recommendations, but noted that the fourth recommendation should be addressed to the Secretary, DHS, for action as opposed to the USCIS Director. We modified the recommendation accordingly. DHS and USCIS outlined actions they have begun to take to implement the four recommendations. DOS also provided technical comments, which we incorporated as appropriate. DOJ did not provide any comments.

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## Background

USCIS is the agency responsible for reviewing and making decisions on whether to approve or deny immigration benefit applications, including petitions filed by U.S. citizens requesting to bring a noncitizen fiancé(e),

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spouse, minor child, or other noncitizen relative to live permanently in the United States in accordance with the INA. Only U.S. citizens can request or petition for noncitizen fiancé(e)s to immigrate to the United States. To do so, citizens must file a form I-129F, Petition for Alien Fiancé(e), with USCIS to enable their fiancé(e) to come to the United States as a K-1 nonimmigrant and then apply for permanent residence.<sup>8</sup> U.S. citizens who have already married noncitizens living abroad may also file Form I-129F to enable their spouse to come to the United States on a K-3 nonimmigrant visa and then apply for permanent residency. The purpose of the form I-129F is to establish the relationship of the petitioner to the beneficiary who wishes to immigrate to the United States. For K-1 fiancé(e) petitions, the petitioner must establish that the petitioner and fiancé(e) are free to marry and that they have previously met in person within 2 years of filing the petition.<sup>9</sup> For K-3 spouse petitions, the petitioner must establish the bona fide marital relationship to the beneficiary.

Two USCIS Service Centers, one in California and another in Vermont, process all I-129F petitions. As part of its I-129F petition review, USCIS obtains criminal history information for specified crimes from the petitioner and conducts background checks on both the beneficiary and petitioner.<sup>10</sup> If the petitioner has ever been convicted of any of the specified crimes, the petitioner is to provide to USCIS certified copies of court and police records showing the charges and dispositions for every such conviction. USCIS conducts name-based background security checks—checks of a petitioner’s name and date of birth—against the

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<sup>8</sup>The K nonimmigrant visa process allows U.S. citizens to petition for a fiancé(e), spouse or their minor children to enter the United States as nonimmigrants and then apply for immigrant status while in this country. A K-1 visa is for a fiancé(e); a K-2 visa is for a fiancé(e)’s minor child; a K-3 visa is for a spouse; and a K-4 visa is for a spouse’s minor child.

<sup>9</sup>Petitioners may seek a waiver of the in-person petitioner and fiancé(e) meeting requirement. 8 U.S.C. § 1184(d)(1).

<sup>10</sup>Petitioners must report on their I-129F forms the following specified crimes: (i) domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, stalking; (ii) homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes listed in (ii); and/or (iii) at least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act. IMBRA § 832(a)(1).

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Interagency Border Inspection System (IBIS).<sup>11</sup> According to USCIS, IBIS queries include a check of five National Crime Information Center (NCIC)<sup>12</sup> data files, which include the Convicted Sexual Offender Registry; the Foreign Fugitive; Immigration Violator; Violent Gang and Terrorist Organization; and Wanted Persons files.<sup>13</sup> During a background security check, if an IBIS query returns a “hit” where the name and date of birth information entered returns a response from one or more of the databases and it appears the petitioner may have a criminal background, USCIS adjudicators forward this information to the Background Check Unit located within the Service Center. This unit conducts further system searches for verification of the criminal histories. After researching and summarizing the criminal information on the petitioner, if there is no national security or criminality issue requiring further investigation, unit staff notate their findings in a memorandum, which they send back to the adjudicator responsible for the file.

While IMBRA requires USCIS to collect petitioner criminal history information, we reported in 2006 that USCIS does not have general authority to deny a family-based petition solely on grounds that the petitioner has a criminal sexual history. Since we issued our report, Congress enacted legislation limiting a petitioner’s ability to immigrate relatives, including fiancé(e)s. The Adam Walsh Child Protection and Safety Act of 2006 prohibits DHS from approving any family-based petition, including a fiancé(e) petition, for any petitioner convicted of a specified offense against a minor unless the DHS Secretary, in his sole and

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<sup>11</sup>IBIS is a multi-agency computer system of lookouts for terrorists, drug traffickers, and other such criminal types. IBIS interfaces with several sources, including the FBI’s National Crime Information Center, and allows its users to interface with all 50 states and the District of Columbia via the National Law Enforcement Telecommunications Systems.

<sup>12</sup>NCIC is a national database of documented criminal justice information and consists of 18 data files, 7 of which relate to property and the remaining 11 to individuals. The 7 property files contain records for articles, boats, guns, license plates, securities, vehicles, and vehicle and boat parts. The 11 person files are the Convicted Sexual Offender Registry, Foreign Fugitive, Identity Theft, Immigration Violator, Missing Person, Protection Order, Supervised Release, Unidentified Person, U.S. Secret Service Protective, Violent Gang and Terrorist Organization, and Wanted Person files. The Interstate Identification Index, which contains automated criminal history record information, is also accessible through the same network as the NCIC.

<sup>13</sup>According to USCIS officials, USCIS access to the five NCIC files is consistent with the FBI’s 2002 authorization to the former Immigration and Naturalization Service for limited NCIC access for purposes of adjudicating applications for immigration benefits.

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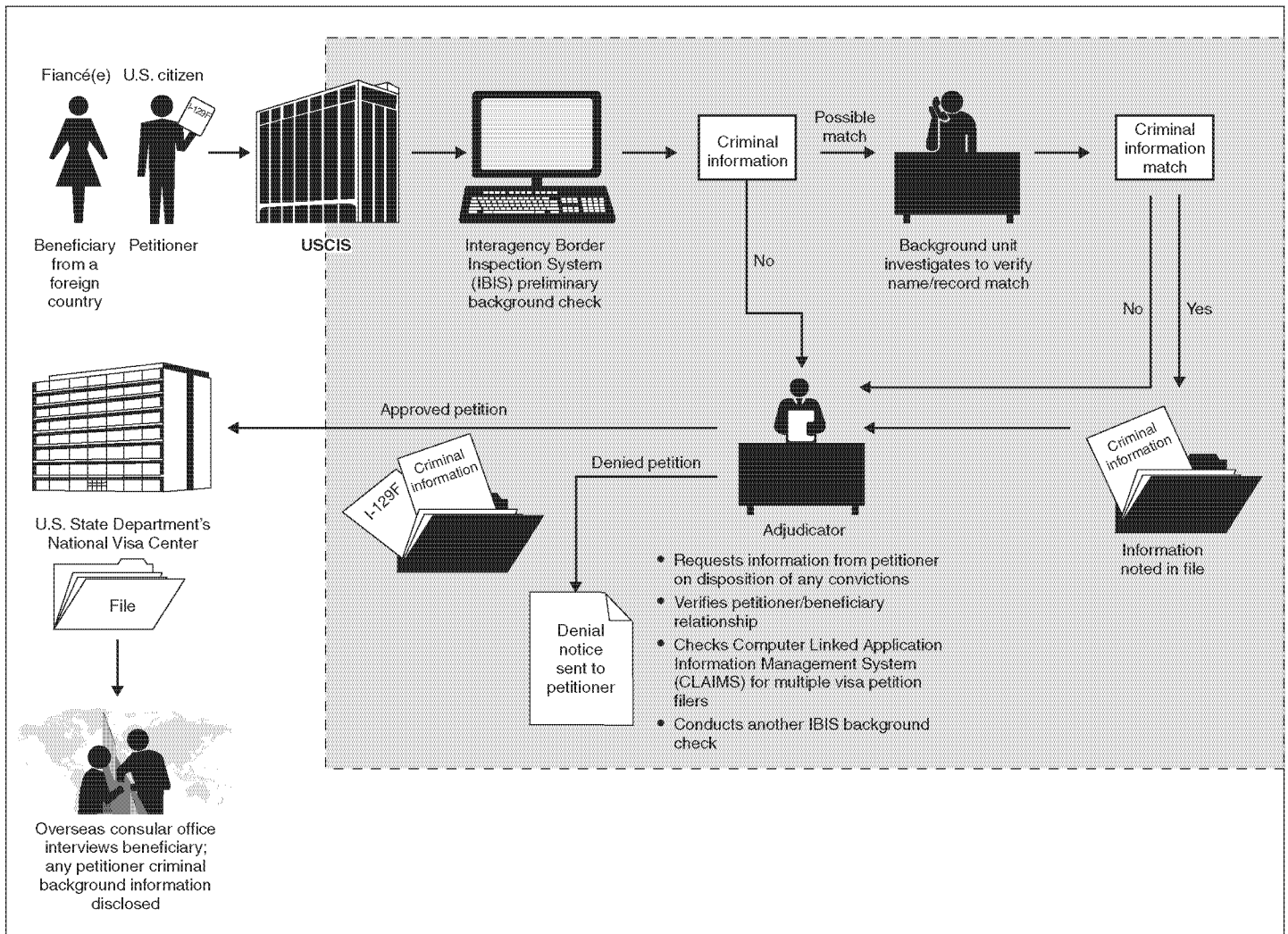
unreviewable discretion, determines that the petitioner poses no risk to the beneficiary.<sup>14</sup>

DOS is responsible for processing all approved visa petitions received from USCIS and for determining whether to issue a visa to beneficiaries who are overseas, such as fiancé(e)s and K-3 spouses. Consular officers are responsible for reviewing (but not re-adjudicating) approved petitions and supporting documentation, and determining whether the noncitizen beneficiary meets admissibility requirements and can be issued a nonimmigrant visa to enter the United States. As part of this review, consular officers interview beneficiaries and ask questions about how the beneficiary and petitioner met. Figure 1 shows the key steps in the I-129F petition filing and visa application process, including filing a petition with USCIS, conducting criminal background checks, USCIS adjudication, and visa applicant interview by DOS.

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<sup>14</sup>Pub. L. No. 109-248, § 402, 120 Stat. 587, 622 (2006). A specified offense against a minor under the Walsh Act includes such things as possession, production, or distribution of child pornography, or criminal sexual conduct involving a minor, including the use of the Internet to facilitate or attempt such conduct. *Id.*, § 111(7), 120 Stat. 587, 592.

**Figure 1: I-129F Petition Filing and Visa Application Process**



Source: GAO analysis of USCIS and State Department information; images (Art Explosion); map (Map Resources).

IMBRA also requires IMBs to search the name of the U.S. client (potential petitioner) against the National Sex Offender Public Registry<sup>15</sup> or relevant state sex offender public registries, and to collect background information

<sup>15</sup>The National Sex Offender Public Registry referred to in IMBRA is the Dru Sjojin National Sex Offender Public Web site.

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from the U.S. client, including the client's marital history and arrest and conviction information for specified crimes, and to provide this information to the foreign client (potential beneficiary). IMBs may not release the foreign client's personal contact information to the U.S. client until the required disclosures have been made and the foreign client provides signed, written consent authorizing the IMB to release personal contact information to the U.S. client. IMBs are also prohibited from engaging in certain activities such as (1) providing personal contact information of a foreign client to anyone other than the U.S. client and (2) providing anyone with personal contact information or other information about individuals under the age of 18. IMBRA establishes federal criminal and civil penalties for IMBs that violate these provisions.<sup>16</sup> IMBRA-related criminal cases are to be prosecuted by the U.S. Attorney's offices, possibly in coordination with the Civil Rights Division or the Child Exploitation and Obscenity section of the Criminal Division depending on the circumstances of the case. With respect to IMBRA-related civil cases, the Attorney General has statutory responsibility for imposing civil penalties after notice and the opportunity for an agency hearing.<sup>17</sup>

Within DOJ, its Executive Office for Immigration Review (EOIR) is responsible for interpreting and administering federal immigration laws and rendering adjudicatory decisions on specific immigration cases. Within EOIR, the Office of the Chief Administrative Hearing Officer is responsible for hearing civil cases related to administrative fines that may be imposed under the INA. For a summary of selected IMBRA requirements for USCIS, DOS, DOJ, and IMBs see, Appendix I.

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## Agencies Have Implemented Some, Not All, IMBRA Requirements

USCIS, DOS, and DOJ have implemented some, but not all of the IMBRA requirements that are designed to inform visa applicants about the persons petitioning for them to immigrate to the United States. For example, USCIS is collecting criminal background information from petitioners and forwarding this information to DOS. DOS is in turn disclosing this information to beneficiaries when it interviews beneficiaries during the visa process. However, USCIS has yet to finalize the information pamphlet required by IMBRA that is to contain information about the visa process and about resources that are available should any beneficiary become a

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<sup>16</sup> Federal civil penalties for each IMBRA violation are between \$5,000 and \$25,000. Federal criminal penalties include up to 5 years of imprisonment. IMBRA, § 833(d)(5).

<sup>17</sup> IMBRA, § 833(d)(5).



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victim of domestic violence. Until the pamphlet is finalized, DOS cannot translate or distribute the pamphlet to beneficiaries as required by IMBRA.

Further, IMBRA assigns responsibility to DOJ for hearing cases and imposing civil penalties against IMBs in violation of its provisions.<sup>18</sup> However, DOJ, DOS, and USCIS have outstanding enforcement issues to resolve, such as which agencies will investigate, refer, and prosecute cases. Although DOJ has drafted IMBRA-related hearing regulations, DOJ states that these regulations cannot be finalized until a framework for the investigation, referral, and prosecution of cases is agreed upon by USCIS, DOS, and DOJ. Table 1 below summarizes selected IMBRA statutory requirements and actions taken by USCIS, DOS and DOJ to implement those requirements as of July 2008.

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<sup>18</sup> IMBRA, § 833(d)(5).

**Table 1: Actions Taken by Agencies to Implement Selected IMBRA Requirements**

IMBRA requirement	Actions taken to implement IMBRA as of July 2008	Remaining implementation actions
<p>1. Petition filed by petitioner to include information on any criminal convictions of the petitioner for any specified crimes. Criminal conviction information obtained from petitioner or from USCIS's background checks to be forwarded to DOS along with approved petition. DOS is to mail the beneficiary the approved petition, which is to include any criminal background information, at the same time as the visa instruction packet.</p>	<p>USCIS revised its I-129F petition to require petitioner to provide certified conviction information for specified crimes. USCIS issued IMBRA guidance that directs adjudicators to forward criminal conviction information to DOS along with any approved petition. DOS issued guidance requiring that the petitioner's criminal background information be mailed to beneficiaries at the same time as the visa instruction packet.</p>	<p>DOS guidance does not require the I-129F petition to be mailed to beneficiaries, only the criminal background information. DOS informed us that it will revise its guidance to require consular officers to mail the I-129F petition, including the criminal background information, when they mail the visa instruction packet, as required by IMBRA.</p>
<p>2. USCIS to create a database to track multiple visa petitions filed for fiancé(e)s and spouses.</p>	<p>USCIS modified its application management system, CLAIMS,<sup>a</sup> to allow it to track multiple fiancé(e) petitions.</p>	<p>None</p>
<p>3. Limits number of petitions a person may file for a noncitizen fiancé(e) or spouse. USCIS cannot approve a petition if the petitioner has filed twice before or if the petitioner has filed the current petition less than 2 years since filing a prior approved petition. Allows for petitioner to request waiver of filing limits.</p>	<p>USCIS modified its procedures to require adjudicators to check a petitioner's prior filings in its application management system for those petitioners who self-attest to having prior filings. USCIS also issued guidance for granting waivers of the filing limits.</p>	<p>USCIS generally checks for filing limits if the petitioner self-attests to having previously filed a petition. At this time, process for checking all petitioners for prior filings yet to be implemented.</p>
<p>4. Upon approval of a 2nd visa petition for a fiancé(e) or spouse, USCIS is to notify petitioner that information concerning the petitioner has been entered in the multiple visa petition tracking database. If a twice-approved petitioner files again within 10 years of filing the first petition, USCIS shall notify the petitioner and the beneficiary about the number of previously approved fiancé(e) or spousal petitions.</p>	<p>USCIS modified I-129F instructions to inform petitioners that multiple filings are tracked. USCIS modified the petitioner approval notice to include information on previous approved petitions.</p>	<p>Process for notifying beneficiaries of previous petitioner approvals has yet to be fully implemented. While DHS/USCIS is statutorily responsible for making this disclosure, and has attempted to fulfill its responsibilities, USCIS is seeking to transfer this responsibility to DOS so that its consular officers might make this disclosure during visa interviews with the beneficiary, as they do with criminal conviction disclosures.</p>

IMBRA requirement	Actions taken to implement IMBRA as of July 2008	Remaining implementation actions
<p>5. During the visa interview, in the visa applicants' primary language, DOS shall</p> <p>Disclose petitioner criminal convictions and any protection orders against the petitioner, and</p> <p>Ask the visa applicant whether an IMB facilitated the relationship between the applicant and the U.S. petitioner, and if so, obtain the identity of the IMB from the applicant and confirm that the IMB provided required information and materials to the applicant.</p>	<p>DOS issued guidance to its consular officers in March 2008 that covers IMBRA disclosures and IMB inquiries consular officers are to make during the visa interview.</p>	<p>None<sup>b</sup></p>
<p>6. USCIS to develop an information pamphlet for K nonimmigrant visa applicants that discusses, among other things, the visa application process, domestic violence and sexual assault services, and beneficiary legal rights and resources. Pamphlet to be completed and available for distribution 120 days after enactment of IMBRA (i.e., by May 2006).</p>	<p>USCIS has drafted the information pamphlet and obtained comments from DOS and DOJ. On July 22, 2008, USCIS announced in the Federal Register that it was soliciting comments from the public on the draft pamphlet.</p>	<p>USCIS has not finalized the information pamphlet. Once finalized, DOS is to translate the pamphlet into numerous foreign languages and mail it to K nonimmigrant visa applicants. Also, IMBs are to provide the pamphlet to their foreign clients in the clients' primary language.</p>
<p>7. Provides for federal criminal and civil penalties on IMBs that violate IMBRA requirements.</p>	<p>DOJ drafted regulations for EOIR to hear IMB civil cases and to assess civil penalties.</p>	<p>DOJ, DOS and DHS have yet to establish an enforcement framework by resolving outstanding issues about which agencies will investigate, refer, and prosecute IMB cases.</p>

Source: GAO analysis of selected IMBRA requirements and USCIS, DOS, and DOJ information.

<sup>a</sup>Computer Linked Application Information Management System, CLAIMS, provides users with automated support for adjudicating cases and processing various notices, among other things. CLAIMS capabilities include case tracking, status update, notice reporting, and document production.

<sup>b</sup>Although not statutorily required to do so, USCIS plans to amend its I-129F to assist DOS in ascertaining IMB compliance with IMBRA, according to USCIS officials. The amended form would ask those petitioners who acknowledged using an IMB to submit the IMB's certification that it made the required IMBRA disclosures to the beneficiary.

## USCIS Obtains and Forwards to DOS Petitioner Criminal Background Information for Disclosure to Beneficiaries

To comply with IMBRA's petitioner criminal background requirements, USCIS revised the I-129F, Petition for Alien Fiancé(e) instructions, to request that the petitioner provide certified criminal conviction information to USCIS. The petition instructions ask whether the petitioner has ever been convicted of any crimes as specified on the form and, if so, directs the petitioner to provide certified conviction information. USCIS does not rely solely on the petitioner to acknowledge if he or she has a

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criminal history. As part of the adjudication process, USCIS conducts security checks on all petitioners.<sup>19</sup> If relevant criminal history—such as information on domestic violence, sexual assault, child abuse, or homicide that was not otherwise disclosed by the petitioner—is uncovered during the security check, USCIS is to request the petitioner to submit certified criminal conviction information before continuing with the adjudication of the case.<sup>20</sup> If the petitioner does not respond to the request to provide additional information, the case is to be denied for failure to respond.

IMBRA requires that USCIS forward the petitioner’s criminal background information to DOS. DOS in turn, is required to mail the petition, including any criminal background information, to the beneficiary at the same time as it mails the visa instruction packet. USCIS issued IMBRA implementation guidance in July 2006 to its adjudicators directing them to include the criminal background information in the file sent to DOS. USCIS officials from both the California and Vermont Service Centers told us that criminal background information is being forwarded to DOS for disclosure to the beneficiary and as discussed later in this report DOS consular officers are receiving this information. DOS also issued IMBRA implementation guidance to its consular officers. DOS’s guidance states that consular officers are to disclose criminal history information to beneficiaries on two separate occasions: (1) when the visa application instructions are mailed to the beneficiary and (2) during the consular interview (which we will discuss later in this report). Although DOS’s guidance does provide for the mailing of criminal history information to beneficiaries, the guidance does not specifically require DOS to mail beneficiaries a copy of the approved I-129F petitions, as required by IMBRA. The I-129F petitions require petitioners to disclose additional information beyond criminal background information, such as their marital status and the number of prior I-129F petitions filed, approved or denied. Thus, not mailing the petitions themselves could prevent beneficiaries from obtaining relevant non-criminal information about their petitioners that could affect their immigration decision. During the course of this review, DOS informed us that it will revise its guidance to require

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<sup>19</sup>As discussed earlier in this report, USCIS conducts security checks via IBIS.

<sup>20</sup>As discussed earlier in this report, if the petitioner has been convicted of a specified offense against a minor, under the Adam Walsh Act, DHS cannot approve such a petition unless the DHS Secretary determines, in his sole and unreviewable discretion, that the petitioner poses no risk to the beneficiary.

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the I-129F petition itself to be mailed to beneficiaries when it mails the visa instruction packet.

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### USCIS Has Modified Its Current Application Management System to Track Multiple Filers

To track petitioners who have filed and had two or more fiancé(e) or spousal petitions approved, IMBRA requires that USCIS create a multiple visa petition tracking database. USCIS officials told us that they have not created a separate database to track multiple visa petition filers. According to USCIS officials, they have addressed the requirement to develop a multiple visa petition tracking database by modifying its application management system, called CLAIMS, to enable adjudicators to notate and track the specific number of fiancé(e) and spousal petitions filed and approved for a particular petitioner. USCIS adjudicators use this information to determine if IMBRA-established filing limits have been exceeded. If exceeded, adjudicators are to check to see if the petitioner requested a waiver of the filing limits. The form I-129F instructions inform the petitioner of the filing limits and the need to request a waiver if the filing limits have been exceeded.

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### USCIS Does Not Uniformly Determine Whether Petitioners Have Exceeded IMBRA's Filing Limitations

IMBRA limits the number of fiancé(e) petitions a person may file unless the petitioner requests and is granted a waiver of the filing limits by USCIS.<sup>21</sup> USCIS officials told us that they do not check every petitioner against USCIS's application management information system, called CLAIMS, to determine if the petitioner has previously filed a fiancé(e) petition. The I-129F, Petition for Alien Fiancé(e) form asks whether the petitioner has ever previously filed for this or any other noncitizen fiancé(e) or husband/wife. According to USCIS officials, if the petitioner answers "yes," adjudicators are to initiate a check against CLAIMS to

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<sup>21</sup>IMBRA prohibits the approval of a petition if the petitioner has filed twice before, or if the petitioner has filed the current petition less than 2 years since filing a prior approved petition. Petitioners can request a waiver of these filing limits by explaining why they believe a waiver would be appropriate in his or her circumstances and provide evidence to support their explanations. Adjudicators review the information and make a determination on whether or not to grant the waiver based on the evidence provided. A waiver cannot be granted if the petitioner has a record of violent criminal offenses, except in extraordinary circumstances such as the petitioner's having acted in self-defense as a victim of domestic violence. It should be noted that IMBRA contains an apparent technical inaccuracy when discussing the multiple filing limits, stating that a "consular officer may not approve a petition" until verifying that the petitioner is within IMBRA's filing limits. However, IMBRA recognizes elsewhere that petition approval is not a DOS but a DHS function, for example, by granting the Secretary of Homeland Security the authority to waive the multiple filing limits. See IMBRA, § 832(a)(1)(D).

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determine whether the petitioner had prior filings. If the petitioner answers “no,” adjudicators are not required to initiate a check for multiple petition filings. According to an adjudication officer, although USCIS procedures do not require adjudicators to check every petitioner against CLAIMS, adjudicators may initiate a check if other case information alerts the adjudicator that the petitioner may have previously filed.

USCIS officials told us that checking petitioners’ names against CLAIMS may result in multiple “hits” on people with names similar to or the same as the petitioner’s. According to USCIS, checking every name against CLAIMS would require a significant amount of review and research to try and determine if the petitioner is a match to any of those already in CLAIMS. However, USCIS officials did acknowledge that a more refined search using the petitioner’s name and another piece of identifying information, such as the petitioner’s date of birth, could reduce the multiple hits and therefore reduce the number of petitioners who would require additional research.

As shown in Table 1, USCIS adjudicators are to routinely check CLAIMS if the petitioner self-attests that he or she has previously filed a petition. Nevertheless, relying on petitioners’ self-attestation to identify previous filers may not always provide accurate results, regardless of whether petitioners must certify the truthfulness of their form I-129F attestations under penalty of perjury. For example, in March 2006, we reported that evidence suggested that immigration benefit fraud was an ongoing and serious problem, although the full extent was not known.<sup>22</sup> As a result, by limiting USCIS checks to those petitioners that acknowledge prior filings, USCIS increases its risk that it will approve more fiancé(e) petitions than allowed under IMBRA, including petitions filed by persons with a record of violent criminal offenses, who are not entitled to a waiver of IMBRA’s filing limits except in extraordinary circumstances. USCIS’s reliance on self-attestation also increases the risk that USCIS will not have accurate multiple filer information to disclose to prospective beneficiaries. USCIS has reported working to develop system enhancements that will facilitate accurate systems checks, but has not specifically stated whether these enhancements will enable it to check filing limits for all petitioners, consistent with IMBRA.

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<sup>22</sup>See GAO, *Immigration Benefits: Additional Controls and a Sanctions Strategy Could Enhance DHS’s Ability to Control Benefit Fraud*, GAO-06-259 (Washington, D.C.: Mar. 10, 2006).

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## Petitioners, but Not Beneficiaries, Are Notified of Prior Petition Approvals

IMBRA also mandates that USCIS notify petitioners, upon approval of a second visa petition, that their filing information is being tracked. In addition, after a second approval, upon filing of a third petition within 10 years of the first filing, USCIS is to notify both the petitioner and beneficiary of the number of previously approved petitions filed by the petitioner. The instructions to the form I-129F inform the petitioner of the circumstances under which repeat filings will be tracked. USCIS officials told us that the filing instructions to form I-129F are the mechanism by which petitioners are informed that multiple filings will be tracked. If USCIS determines a petitioner to be a multiple filer, but approves the petition under its waiver authority, the approval notice will indicate whether the approval is the 2nd, 3rd, 4th, etc.

Under IMBRA, USCIS is responsible for notifying beneficiaries of prior petition approvals, in contrast with the disclosure of criminal conviction information, which is to be made by DOS. USCIS officials told us that initially they attempted to notify beneficiaries, as required. However, USCIS no longer tries to notify beneficiaries because of the reported difficulty in obtaining accurate overseas mailing addresses. Because of inaccurate addresses, USCIS officials stated that a large number of notifications were returned as undeliverable. Because of the difficulties reported with overseas mail and the amount of undeliverable mail the USCIS received, USCIS officials told us they plan to discuss a process with DOS to have its consular officers assume this notification responsibility and notify beneficiaries of prior petition approvals during the consular interview, as consular officers do with criminal conviction information. At the time of our review, DOS officials said they had not held a discussion with USCIS about providing such notification. According to USCIS officials, USCIS has drafted a memo to its adjudicators addressing the planned notification process. However, in the absence of an agreement with DOS to undertake this notification responsibility, beneficiaries are not currently being notified about the number of previously approved fiancé(e) or spousal petitions, as required by IMBRA.

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Most DOS Consular Officers We Contacted Said They Are Disclosing Criminal Background Information to Beneficiaries, but Inquiries about Use of IMBs Are Not Always Made

Once USCIS forwards the petitioner's criminal conviction information to DOS, IMBRA requires that DOS disclose this criminal background information and information regarding any protection orders<sup>23</sup> related to the petitioner to the beneficiary. In addition to disclosing this information by mail as discussed above, DOS is to provide this information to the beneficiary, in the beneficiary's primary language, during the visa application interview. Officials from six of the seven consular posts we contacted told us that they were disclosing this information to the beneficiaries in either the beneficiary's primary language or a language common to the consular officer and the beneficiary if translation services into the beneficiary's primary language were unavailable. An official from the remaining post told us that consular officers at her post had not been disclosing a petitioner's criminal history to beneficiaries, but based upon our inquiry, she now planned to have consular officers begin disclosing criminal history information to beneficiaries. At the time of our interviews with consular officials during February 2008, DOS had not yet issued formal guidance to its consular posts regarding implementation of IMBRA. In March 2008, DOS issued guidance to its posts on implementation of IMBRA including the need to disclose petitioner criminal conviction information for certain offenses and information related to any protection orders related to the petitioner. The guidance also states that after providing any related criminal history information, consular officers should give the applicant time to decide if he or she still wishes to proceed with the visa application process.

In addition to disclosing petitioner criminal background information to the visa applicant during the consular interview, IMBRA mandates that DOS ask beneficiaries if an IMB facilitated the relationship between the petitioner and beneficiary. If so, DOS is to obtain the IMB's name from the beneficiary and confirm whether the IMB gave the beneficiary all the information required by IMBRA, such as the petitioner's marital, criminal, and protection order history. Officials from four of the seven consular posts we contacted told us that their officers had not been inquiring about whether services of an IMB were used. Officials from two posts told us their consular staff asked questions about how the petitioner and beneficiary met, but not specifically whether the services of an IMB were used. An official from one post stated that the post's consular staff asked questions about how the petitioner and beneficiary met as well as whether

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<sup>23</sup>In general, a protection order prohibits one individual from contacting or coming into contact with another individual.



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or not the services of an IMB were used. Issued after our interviews, DOS's March 2008 guidance to consular posts states that consular officers should ask the beneficiary the questions mandated by IMBRA, including whether an IMB facilitated the relationship, what the IMB's name was, and whether the IMB provided the information required by IMBRA. To assist in this effort, USCIS officials told us that they plan to amend the I-129F form to ask those petitioners who acknowledged using an IMB to submit the IMB's certification that it made the required IMBRA disclosures to the beneficiary.

Consular officers from six of seven offices told us that they have encountered relatively few cases where the petitioner had a criminal history. For example, officials from one consular post that processed over 11,000 K-1 and K-3 visa applications in 2007, told us that the post encounters about 20 applications per year (about 0.2 percent) where the petitioner had a criminal history involving violent IMBRA-specified offenses. Officials from two of the seven offices told us that they could not recall any fiancé(e) visa applicants that acknowledged using an IMB. However, officials from another consular post stated that they conducted a survey which indicated that about 12 percent of their fiancé(e) visa applicants used the services of an IMB.

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### USCIS Has Not Finalized the Information Pamphlet Designed to Inform Beneficiaries about Their Legal Rights and Resources

IMBRA requires that USCIS, in consultation with DOS and DOJ, develop an information pamphlet for beneficiaries to include information on the visa application process; the illegality of domestic violence, sexual assault, and child abuse in the U.S.; the legal rights of immigrant victims and the resource services available to them; child support; marriage fraud; a warning that some U.S. citizens with a history of violence may not have a criminal record; and information on requirements for IMBs under IMBRA. Once finalized, DOS is to translate the pamphlet into at least 14 foreign languages,<sup>24</sup> and every 2 years, USCIS, in consultation with DOJ and DOS, shall determine at least 14 language translations for the pamphlet based on the languages spoken by the greatest concentrations of K nonimmigrant visa applicants. Beneficiaries must receive the pamphlet from consular officers during visa interviews and from USCIS adjudicators during

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<sup>24</sup>To best serve the language groups having the greatest concentration of nonimmigrants, IMBRA requires DOS to translate the information pamphlet into Russian, Spanish, Tagalog, Vietnamese, Chinese, Ukrainian, Thai, Korean, Polish, Japanese, French, Arabic, Portuguese, Hindi, and such other languages the Secretary of State may specify.

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adjustment interviews<sup>25</sup> and IMBs must provide the pamphlet to their foreign clients. In addition, the pamphlet is to be posted on DHS, DOS, and consular post Web sites. Further, USCIS is to develop summaries of the pamphlet to be discussed with beneficiaries in their primary languages during consular or adjustment interviews. The pamphlet was to have been available for distribution by May 2006.

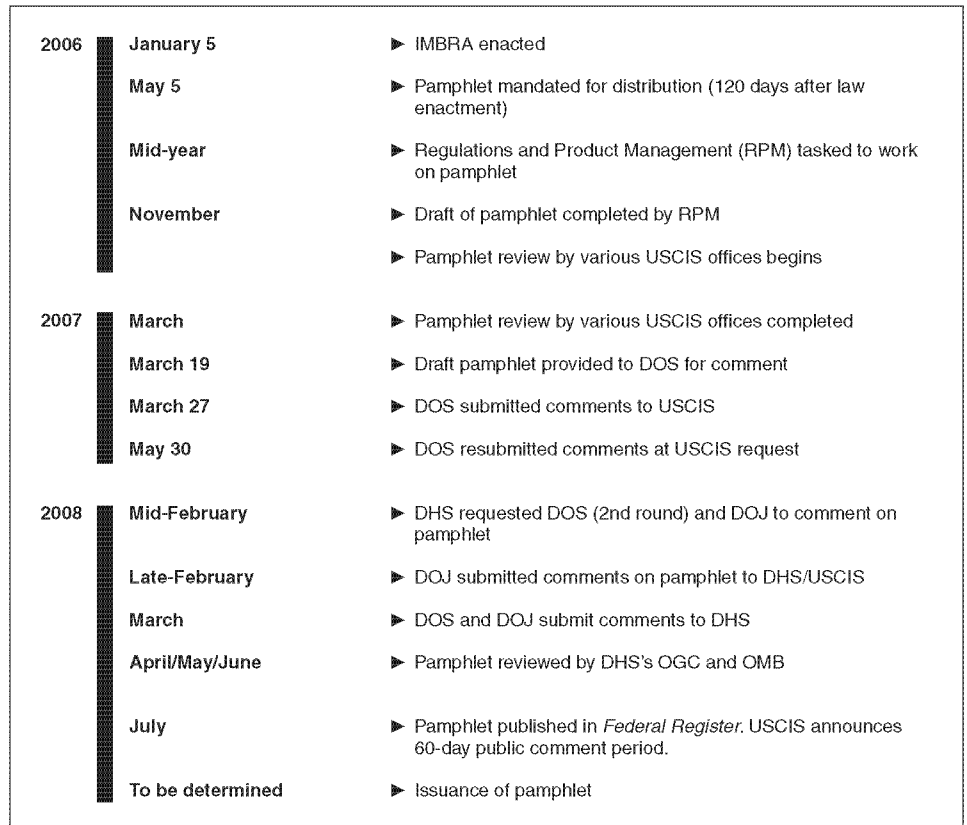
As of July 2008, USCIS has yet to finalize the information pamphlet. According to USCIS officials, the time needed to coordinate with various USCIS and DHS components is one reason for delay in finalizing the pamphlet. In April 2008, USCIS officials told us that the draft pamphlet had been forwarded to DHS' Office of General Counsel and the Office of Management and Budget (OMB) for review. The pamphlet was under review through June of 2008. IMBRA also requires that USCIS consult with nongovernmental entities with expertise in areas such as the legal rights of immigrant victims of battery and extreme cruelty in developing the pamphlet. On July 14, USCIS signed the *Federal Register* notice seeking public comments on the pamphlet. On July 22, the *Federal Register* notice and pamphlet were published and USCIS intends to utilize the 60-day public comment period to provide the public, including any interested nongovernmental organizations, an opportunity to comment on the draft pamphlet before USCIS finalizes the pamphlet for distribution and publication.<sup>26</sup> USCIS officials told us they did not know when the pamphlet would be finalized, nor did they have a specific time frame for finalizing the pamphlet. Figure 2 below shows a timeline which illustrates key steps in the development of the information pamphlet.

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<sup>25</sup>USCIS adjudicators conduct adjustment interviews with family-based applicants who are already in the United States in a nonimmigrant status, such as a visitor or student. When USCIS approves the petition, rather than send the approved petition to DOS, a USCIS adjudicator will determine whether to allow the noncitizen to change, or "adjust," his or her status to that of a lawful permanent resident.

<sup>26</sup>Domestic Violence Guidance Pamphlet for K Nonimmigrants, 73 Fed. Reg. 42586 (July 22, 2008).

**Figure 2: Timeline Showing Key Steps in the Development of the Information Pamphlet**



Source: GAO analysis of IMBRA legislation and USCIS, DOS, and DOJ information.

Since USCIS has not finalized the information pamphlet, DOS has been unable to translate it. DOS officials told us that once they receive the finalized pamphlet, the translations would be done expeditiously. Until the pamphlet is finalized, translated, and distributed USCIS increases the risk that beneficiaries are not being made aware of their rights or the resources that are available should they encounter domestic violence.

## Framework for the Investigation, Referral, and Prosecution of IMBRA Violators Still under Development

As discussed earlier in this report, IMBRA establishes federal civil and criminal penalties for IMBs who violate its provisions. However, USCIS, DOS and DOJ officials told us that there was no framework in place for enforcing the provisions related to potential IMBRA violations by IMBs. DOJ and DOS officials told us that the agencies are discussing these issues, but they could not tell us when a framework would be in place.

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DOJ officials told us that the Office of the Chief Administrative Hearing Officer, within DOJ's Executive Office for Immigration Review (EOIR), would likely hear civil cases under IMBRA, just as it hears civil cases under the INA. The Chief Administrative Hearing Officer within EOIR had drafted IMBRA-related regulations regarding how civil penalties would be administered, but these regulations cannot be finalized until the agencies decide who will be responsible for investigating, referring, and ultimately prosecuting potential violations at a hearing before DOJ's Chief Administrative Hearing Officer. DOJ officials stated that since IMBRA has been enacted, there have been no civil or criminal cases brought against IMBs. Without a framework for enforcement of the IMBRA provisions, it will be difficult for IMBRA violators to be prosecuted and assessed applicable penalties.

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## Most of the USCIS Data Required for GAO Study Are Not in a Summary or Reportable Form; Other Required Data Are Not Collected

As part of our study on the impact of IMBRA on the K nonimmigrant visa process, IMBRA mandated that USCIS and DOS collect and maintain specific data for us to report. This required data included changes in the number of fiancé(e) petitions filed and the extent to which petitioners had one or more criminal convictions or a history of violence, including how many of those petitioners had used services of an IMB or had been granted a waiver of IMBRA's filing limits. Although IMBRA mandated that USCIS and DOS collect and maintain the data necessary for us to conduct such a study, the data we are requested to report on are essentially petition-driven data for which USCIS would have responsibility to collect and maintain. While USCIS has collected some data necessary for this study, most of the data IMBRA calls for us to report are not available in a summary or reportable format. For example, USCIS provided us with data on the number of fiancé(e) petitions filed in the past three fiscal years. However, data on which petitioners had criminal convictions or a history of violence were not available in a summary or reportable format. That is, although the I-129F petition asks the petitioner to list specified criminal convictions, USCIS does not capture this data electronically.

Table 2 lists the petition-related data elements that IMBRA requires GAO to report on and whether the data were available in a summary or reportable format.

**Table 2: Summary Table of Data GAO Mandated to Report**

Information required to be collected and maintained under IMBRA	Were data available in a summary or reportable format?
1. Petitions filed for K nonimmigrant visas.	Yes
2. Petitions denied due to multiple filing limitations.	Partially. Approval and denial data were compiled; however reason for denial was not compiled.
3. Filing limitation waivers filed, approved, denied, and reason why waiver approved or denied.	Partially. Number of waivers approved and denied available, but not reason why waiver approved or denied.
4. K nonimmigrant fiancé(e), spouse, or family-based immigration petitions filed by prior filers (2 or more filings).	Yes
5. K nonimmigrant fiancé(e), spouse, or family-based immigration petitions filed by concurrent filers (2 or more filings).	Yes
6. Annual and cumulative number of petitioners and applicants tracked in the multiple filing database.	Partially. Annual number of petitioners who have filed previously was available, but not cumulative number of multiple filers.
7. Petitions forwarded to DOS where petitioner had 1 or more criminal convictions.	No
8. Petitioners with one or more convictions who were granted or denied waivers of multiple filing limits.	No
9. Persons with a history of violence who are using the K nonimmigrant visa process.	No
10. Persons with a history of violence who are using the services of an IMB.	No

Source: GAO analysis of IMBRA data requirements and USCIS information.

Available USCIS data shows that the number of I-129F petitions filed since IMBRA was passed declined slightly from about 66,200 in fiscal year 2006 to about 62,500 in fiscal year 2007. The approval rate for fiancé(e) petitions decreased slightly from about 86 percent to about 81 percent over the same time period. In fiscal year 2007, of the approximately 62,500 petitions filed, 309 (less than 1 percent) petitioners applied for a waiver of the filing limitations through the service centers.<sup>27</sup> USCIS service centers approved 308 waiver applications and denied one; however, the reasons for the approval and denial decisions are unknown since USCIS does not currently maintain such data. In fiscal year 2007, the California Service Center reported 1,529 petitions filed by people who had previously filed.<sup>28</sup> During that same period, USCIS service centers reported 176 petitions filed by concurrent filers.

<sup>27</sup>See footnote 21 for a discussion of the filing limitations and waiver authority.

<sup>28</sup>Data on previous filers from the Vermont Service Center were not readily available.

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USCIS officials told us that for the data elements currently not available in summary or reportable format they are actively seeking to modify the CLAIMS application management system to capture this data. These modifications would include, for example, creating new data fields in CLAIMS to (1) capture the reason a petition is denied or granted a waiver, such as whether USCIS denied a petition based on filing limitations, and (2) identify those petitioners that had a criminal conviction or a history of violence. USCIS officials told us that they were in the process of developing a business case to modify CLAIMS for USCIS senior management review. If USCIS senior management approves the business case, then the changes to CLAIMS would be made. USCIS officials were unable to provide a time frame for when the review of the business case would be completed and, if approved, when the changes to CLAIMS would be made.

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## Conclusions

The purpose of IMBRA is to address issues of domestic violence and abuse against beneficiaries by petitioners, including those who met their foreign-born spouses through an international marriage broker. While DHS/USCIS, DOS, and DOJ have taken some steps to implement IMBRA, certain IMBRA requirements have yet to be fully implemented, increasing the risk that beneficiaries are not fully aware of their petitioner's background or their rights. DOS's current procedures do not provide for mailing the approved I-129F petitions to beneficiaries. During the course of this review, DOS informed us that it will revise its guidance to require the I-129F petition to be mailed to beneficiaries when it mails the visa instruction packet. USCIS's current procedures do not ensure that all petitioners are within IMBRA's multiple filing limitations because USCIS does not check all petitioners for prior filings. Beneficiaries are not being notified of the number of previously approved petitions filed by their petitioner as required by IMBRA. Without developing a mechanism to check all petitioners for prior filings nor a mechanism for sharing information with beneficiaries about the number of previously approved petitions filed by their petitioner, beneficiaries may not have all the information they need to make an informed decision about whether to immigrate to the United States. Until the information pamphlet is finalized, translated and distributed, USCIS increases the risk that beneficiaries are not being made aware of their rights or the resources that are available should they encounter domestic violence. Without a legal framework for enforcing IMBRA's provisions, it will be difficult for IMBRA violators to be prosecuted and assessed applicable penalties.

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We could not determine the reason a petitioner was denied or granted a waiver or the extent to which petitioners with a criminal history or history of violence have filed K nonimmigrant petitions, including how many of those petitioners used the services or an IMB or received waivers of IMBRA's filing limits, because USCIS did not collect and maintain this data in a summary or reportable format for this study. Should USCIS modify its CLAIMS system to capture this data, USCIS may be able to report this information in the future.

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## Recommendations

To improve implementation of IMBRA and to help ensure that beneficiaries receive all IMBRA-required information, we recommend that the Director, USCIS:

- Develop a mechanism to check all petitioners for prior filings to determine if a petitioner exceeds the filing limits established by IMBRA.
- Develop a mechanism, in consultation with the Secretary of State, to implement the IMBRA requirement that beneficiaries be notified regarding the number of previously approved petitions filed by the petitioner.
- Develop a timeframe for finalizing the information pamphlet so that it can be translated and distributed as required by IMBRA.

In order to help ensure that penalties can be imposed on IMBRA violators as provided for in the law, we recommend that the Secretary of Homeland Security

- In consultation with the Secretary of State and the Attorney General, develop a framework for the investigation, referral, and prosecution of potential IMB violations of IMBRA.

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## Agency Comments and Our Evaluation

We provided a draft of this report to the Secretaries of Homeland Security and State and the Attorney General for review and comment. We received comments from DHS that are reprinted in appendix II. DHS concurred with our recommendations and outlined actions that USCIS and DHS are undertaking to address them. DOS provided technical comments, which we have incorporated into the report as appropriate. DOJ did not provide comments.

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In its comments, DHS stated that USCIS is actively seeking to modify the CLAIMS database in order to provide an automated solution for identifying multiple filers. Additionally, USCIS is in the process of refining the search criteria to reduce multiple matches on people with common last names. DHS also stated that USCIS was actively working with DOS to ensure that DOS is aware of USCIS annotations on the I-129F petitions indicating multiple filings so that DOS can inform its consular officers to notify beneficiaries of the number of previously approved petitions filed by the petitioner. Further, DHS stated that USCIS has taken a major step toward meeting the report's recommendation to finalize the IMBRA-required information pamphlet by seeking public comment on the draft pamphlet through the publishing of the *Federal Register* notice and pamphlet on July 22, 2008. Lastly, DHS stated that it plans to consult with the departments of State and Justice to implement the necessary framework for the investigation, referral, and prosecution of potential IMBRA violations and that work towards implementing this recommendation is under way. We agree that these actions should help improve the implementation of IMBRA and help ensure that beneficiaries receive all IMBRA-required information as well as provide for the imposition of penalties on IMBRA violators as provided for in the law.

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We are sending copies of this report to the Secretaries of Homeland Security and State and the Attorney General. We will send copies to other interested parties and make copies available to others who request them. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.



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If you or your staffs have any questions about this report, please contact me at (202) 512-8777 or at stanar@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix III.



Richard M. Stana  
Director, Homeland Security and Justice Issues

# Appendix I: Summary of Selected IMBRA Requirements for USCIS, DOS, DOJ, and IMBs

IMBRA Section	Action Item	Responsible Entity	Statutory Requirement
832	Multiple filer database	USCIS	Create a database to track multiple visa petitions filed for fiancé(e)s and spouses.
832	Multiple filer notification to Petitioner and Beneficiary	USCIS	Upon approval of 2nd visa petition for a fiancé(e) or spouse, notify petitioner that multiple filings are being tracked; after 2nd petition approval, if another is filed within 10 years of first, notify petitioner and beneficiary of number of previous approvals.
832	Petitioner Criminal History/Collection	USCIS	Obtain petitioner's criminal history information.
833	Petitioner Criminal History/Disclosure by Mail	USCIS/DOS	USCIS is to provide a copy of the petition and any petitioner criminal background information to DOS, which must mail such documentation to the beneficiary, along with other materials such as the domestic violence information pamphlet.
833	Visa Interviews and Disclosures	DOS	<p>During the visa interview, DOS is to:</p> <p>Share petitioner's criminal background information with the visa applicant (beneficiary) in his/her primary language. DOS may not disclose a victim's name or contact information, but shall disclose the relationship of the victim to the petitioner. DOS shall inform the visa applicant that criminal background information is based on the available records and may not be complete.</p> <p>Provide visa applicant a copy of the domestic violence information pamphlet and an oral summary in the applicant's primary language.</p> <p>Ask visa applicant, in the applicant's primary language, whether an international marriage broker facilitated the relationship between the applicant and the U.S. petitioner, and if so, obtain the identity of the IMB from the applicant and confirm that the IMB provided the applicant required information and materials.</p>
833	Development of Information Pamphlet and Pamphlet summaries	USCIS	Develop information pamphlet and pamphlet summaries for K nonimmigrants on domestic violence rights and resources, in consultation with DOS and DOJ.
833	Translation of Information Pamphlet	DOS	Translate information pamphlet into at least 14 foreign languages specified by IMBRA. Every 2 years, translate pamphlet into at least 14 more languages, as specified by USCIS in consultation with DOS and DOJ.

**Appendix I: Summary of Selected IMBRA Requirements for USCIS, DOS, DOJ, and IMBs**

<b>IMBRA Section</b>	<b>Action Item</b>	<b>Responsible Entity</b>	<b>Statutory Requirement</b>
833	Dissemination of Information Pamphlet	USCIS/DOS/IMB	<p>IMBRA specifies four methods of disseminating the information pamphlet:</p> <p>By mail: DOS to mail pamphlet to visa applicant when it mails the visa instruction packet and a copy of the petition (including any criminal history information). Pamphlet shall be in the primary language of the applicant or in English if no translation is available.</p> <p>During interview: USCIS and DOS to distribute information pamphlet to beneficiary at any USCIS adjustment interview or DOS visa interview. At the respective interview, USCIS and DOS officers must also review pamphlet summary with the applicant in his/her primary language.</p> <p>On the web: DHS, DOS and its consular offices must post pamphlet on their websites.</p> <p>By the IMB: IMBs are to provide the pamphlet to their foreign clients in the clients' primary language.</p>
833	Enforcement	DOJ	Impose federal civil penalties associated with IMB violations of IMBRA.
833	Prohibition on Marketing of Children	IMB	IMBs cannot provide any individual or entity with the personal contact information, photograph, or general information about the background or interests of any individual under the age of 18
833	Collection of Background Information	IMB	Search the National Sex Offender Registry or State sex offender public registry; collect background information about the U.S. client such as U.S. client's marital and criminal history, including protection orders or restraining orders.
833	Informed Consent	IMB	Before providing U.S. client or his/her representative with the personal contact information of any foreign client, IMB must collect the U.S. client's sex offender registry and background information, share such information with the foreign client, and obtain the foreign client's signed, written consent to share his/her personal contact information with the U.S. client.
833	Disclosure/ Confidentiality	IMB	<p>IMBs shall not provide the foreign national client's personal contact information to any person or entity other than a United States client.</p> <p>IMBs shall not disclose to the beneficiary the name or location of any victim of the U.S. client, but shall disclose the relationship between the U.S. client and the victim.</p>

Source: GAO summary of selected IMBRA requirements.

# Appendix II: Comments from U.S. Department of Homeland Security

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



**Homeland  
Security**

July 31, 2008

Mr. Richard M. Stana  
Director  
Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Stana:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO's) draft report GAO-08-862 entitled *INTERNATIONAL MARRIAGE BROKER REGULATION ACT OF 2005: Agencies Have Implemented Some, but Not all of the Act's Requirements*.

To improve implementation of the International Marriage Broker Regulation Act (IMBRA) and to help ensure that beneficiaries receive all IMBRA-required information and that penalties can be imposed on IMBRA violators as provided for in the law, GAO recommends that the Director, USCIS take four actions. The Department's response to the recommendations follows but we note that Recommendation 4 should be addressed to the Secretary for action as opposed to the USCIS Director.

**Recommendation 1:** Develop a mechanism to check all petitioners for prior filings to determine if a petitioner exceeds the filing limits established by IMBRA.

**Response:** Concur. USCIS is actively seeking to modify the CLAIMS database in order to provide an automated solution for identifying all multiple filers. USCIS is in the process of refining the search criteria to reduce multiple matches on people with common last names.

**Recommendation 2:** Develop a mechanism, in consultation with the Secretary of State, to implement the IMBRA requirement that beneficiaries be notified regarding the number of previously approved petitions filed by the petitioner.

**Response:** Concur. USCIS currently annotates the approved I-129F petition to indicate multiple filings to enable Department of State (DOS) consular officers to notify the beneficiary during the visa interview. USCIS is actively working with DOS to ensure their consular officers are aware of this and incorporate it into their standard operating procedures.

[www.dhs.gov](http://www.dhs.gov)

**Recommendation 3:** Develop a timeframe for finalizing the information pamphlet so that it can be translated and distributed as required by IMBRA.

**Response:** Concur. USCIS is pleased to report that on July 15, 2008, Acting Director Scharfen signed the *Federal Register* (FR) notice seeking public comments on the IMBRA pamphlet. USCIS forwarded the FR notice and the pamphlet to the *Federal Register* and it was published on July 22, 2008.

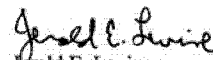
Publishing the FR notice and the pamphlet completes a major step in the process for finalizing the IMBRA pamphlet.

**Recommendation 4:** In consultation with the Secretary of State and the Attorney General, develop a framework for the investigation, referral, and prosecution of potential IMB violations of IMBRA.

**Response:** Concur. The Department will consult with the Departments of State and Justice to develop the necessary framework for the investigation, referral, and prosecution of potential IMBRA violations. In fact, work to implement this recommendation is underway.

Thank you for the opportunity to comment on this draft report and we look forward to working with you on future homeland security issues.

Sincerely,

  
Jerald E. Levine  
Director  
Departmental GAO/OIG Liaison Office

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# Appendix III: GAO Contact and Staff Acknowledgments

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## GAO Contact

Richard M. Stana, (202) 512-8777 or stanar@gao.gov

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## Staff Acknowledgments

In addition to the contact named above, Michael Dino, Assistant Director, and Carla Brown, Analyst-in-Charge, managed this assignment. Lemuel Jackson and James Russell made significant contributions to the work. Stanley Kostyla and James Ungvarsky assisted with design, methodology and data analysis. Adam Vogt provided assistance in report preparation; Christine Davis and Willie Commons III provided legal support; Karen Burke and Tina Cheng developed the report's graphics.

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