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December 3, 2007

Mr. Jeff Denale  
Coordinator for Counterterrorism  
Office of Security  
United States Agency for International Development  
Ronald Reagan Building  
1300 Pennsylvania Avenue NW  
Washington, DC 20523

BY ELECTRONIC MAIL TO: [jdenale@usaid.gov](mailto:jdenale@usaid.gov)

Dear Mr. Denale:

This is a letter of comment concerning the Notice of Public Information Collection which was republished on October 2, 2007 in the *Federal Register* (72 FR 56041-4) with a Proposed Partner Information Form ("Form"), both of which relate to collection of information in connection with a proposal by USAID to implement a Partner Vetting System ("PVS").

Mercy Corps works amid disasters, conflicts, chronic poverty and instability to unleash the potential of people who can win against nearly impossible odds. Since 1979, Mercy Corps has provided \$1.3 billion in assistance to people in 100 nations. Supported by headquarters in North America, Europe, and Asia, the agency's global programs employ 3,400 staff worldwide and reach 14.4 million people in more than 35 countries. Over the past five years, 90 percent of the agency's resources have been used for programs that help people in need.

This is the fourth letter that we have transmitted to USAID on subjects related to the proposed PVS. Mercy Corps previously responded to Federal Register notices published July 17, 2007, July 20, 2007 and July 23, 2007. In each of its responses, Mercy Corps presented several objections to the proposed PVS system, collected data and provided reasonable suggestions USAID could utilize to reach the same policy goals set forth in the Federal Register notices without placing a unreasonable burden on the NGO community. Accordingly, we are resubmitting all three in their entirety as an attachment to this letter in view of the fact that the October 2, 2007 notice did little to change the substance of the USAID proposal to collect information.

Our concerns about the four Paperwork Reduction Act-based criteria listed in your announcement that were expressed in that letter have not materially changed. We specifically request that the subject letter be made a part of the public record related to your July 23, 2007 notice and that it be included in any material which your office subsequently provides to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget in connection with this proposed information collection.

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In addition to our comments provided related to the July 23, 2007 notice, Mercy Corps is providing specific responses regarding the Form concerning the proposed data requested, the proposed instructions, and the statements concerning public burden and the authority to collect the subject information.

## **I. DATA REQUESTED**

### A. Part I Questions 1 and 5

The information requested in Part I, Questions 1 and 5 is either duplicative or confusing as to the entity the information is requested from. Question 1 refers to the "prime contractor, grantee or recipient proposing the award or other assistance," while Question 5 asks for the "organization proposed to receive award or other assistance." If Questions 1 and 5 refer to the same entity, then they are duplicative. If Question 5 refers to one or more sub-grantee and not the prime contractor, this should be clarified. It should also be made clear whether the sub-grantee in question or the prime contractor is required to fill out the information required in Question 5.

### B. Part I Question 6

The term "key individuals associated with the organization" contained in Question 6 is vague and the instructions provide no greater clarity, particularly because two of the examples given rely on the introductory abbreviation "e.g.". Further, the phrase "any other person with significant responsibilities for administration of the USG-financed activities or resources" is ill-defined and ambiguous. The lack of clear language will certainly result unnecessary data collection and wholesale unevenness in the responses of affected parties. This will provide little practical utility for USAID while imposing significant burden on respondents.

### C. Part II

Given the ambiguity of who should fill out the form and the vague description of which key individuals should provide the information requested in Question 5, it is difficult to know 1) who should provide the certification; and 2) what "sound business practices" would require.

## **II. PUBLIC BURDEN ESTIMATE**

Despite the fact that our earlier letter in response to USAID's July 23, 2007 information collection notice fully addressed the issue of the accuracy of the burden estimates, we must re-emphasize our objections here based on the information retained in the October 2 announcement and on the proposed form. The estimate that each response to the request for information will average 15 minutes has no basis because the number of individuals about whom the information would need to be gathered for each response is, as noted above, ambiguous and variable. The assertion contained in the October 2, 2007 announcement that there will be 2,000 responses affecting 2,000 respondents is equally unrealistic. This estimate represents a fundamental miscalculation of the number of organizations with which USAID is doing direct



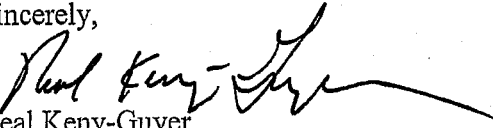
acquisition and assistance business and the number of sub-grantees and subcontractors with which those organizations, in turn, are involved. Such inaccuracy is so pronounced that we believe it alone constitutes grounds for the Office of Information and Regulatory Affairs to disapprove USAID's information collection request, pursuant to 5 CFR 1320.

### III. PRIVACY ACT STATEMENT

In letters sent to USAID's Privacy Act official in response to announcements published in the July 17, 2007 and July 20, 2007 editions of the *Federal Register*, we strongly challenged USAID's authority to develop and implement the Partner Vetting System. Accordingly, we cannot let stand, without similar comment, the assertions, in the "Privacy Act Statement" contained in the proposed form. There, USAID states that "applicable laws and implementing procedures" require the type of screening that is anticipated under the proposed Partner Vetting System and this information collection request. Yet no other federal award-making agency, including those with international programs, has attempted to become engaged in such procedure. This is true despite the fact that they are covered by the same executive orders and Homeland Security directives cited. In the face of that fact, to state that the information collection is required is without merit. The statutory section so fully cited in the Notice relates only to activities in the West Bank and Gaza and does not extend elsewhere. And the "other legislative and executive branch prohibitions" which are mentioned are not specifically identified. Accordingly, they have no veracity and are therefore to be discounted. We further assert that the "broad discretion" provided to USAID under the Foreign Assistance Act and which is cited as part of the rationale for this information collection does not extend to taking actions such as those that would take place under the proposed Partner Vetting System which so clearly contradict the letter and spirit of the Paperwork Reduction Act and its implementing regulations.

As stated in our previous responses, Mercy Corps supports USAID's objective of seeing that its funds do not support entities or individuals associated with terrorism. However, we strongly believe that the PVS is unwarranted, poorly conceived, and excessively burdensome on USAID's partners, and do not believe that it would achieve the desired objective

Sincerely,

  
Neal Keny-Guyer  
Chief Executive Officer

Encl.



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SUBMITTED VIA EMAIL

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Re: Notice of Public Information Collections  
Partner Vetting System  
72 Fed. Reg. 40110  
Doc. 07-3555

This letter is in response to the above referenced Paperwork Reduction Act request for comments regarding the paperwork burden imposed by the proposed Partner Vetting System proposed by USAID. Because USAID failed to follow required rulemaking procedures and has not provided adequate information regarding how the PVS will be implemented, it is extremely difficult to offer accurate detail about the potential burden of this program on Mercy Corps. Therefore, Mercy Corps strongly recommends that USAID withdraw this and the other notices regarding the Partner Vetting System (PVS) and conduct appropriate rulemaking as discussed in our previous comments to the USAID's Chief Privacy Officer concerning the July 17, 2007 *Federal Register* announcement and the July 20, 2007 proposed rulemaking notice.

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You requested specific comments to four questions. They are answered in order as follows:

**(a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.**

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USAID did not follow the appropriate rule-making processes in connection with the PVS, nor has USAID referenced any credible facts, findings or assessments to support its action. USAID failed to provide any information about how data will be collected, what information it will use to "vet" the information against, or how it will investigate any "red flags" that result from the vetting process. While Mercy Corps shares USAID's objective of preventing funds from being funneled to terrorists, the proposed PVS as described does not appear to meet that objective.

Comments on whether or not the PVS is necessary or if the information will have practical utility cannot be assessed without the information that would be provided under a rule-making process. Mercy Corps is not aware of any facts that would support USAID's implementation of the PVS. Without having an authoritative description of the PVS system and its implications, it is impractical to provide any further assessment of whether or not the PVS and the information collected are necessary for the performance of USAID's functions.

**(b) The accuracy of the burden estimates.**

We do not believe USAID's estimates are accurate and are stymied how USAID calculated its estimate based on the vague information provided in the Federal Register. Not only is the description of covered individuals broadly defined and conditionally worded, USAID also failed to provide a form, a process for complying with the PVS, a clear limitation on the type of information to be collected, or any analysis regarding the impact of "re-vetting" or responding to red flags. Without this detail – detail that surely would have been developed if USAID had followed appropriate rulemaking procedures – it is impossible to accurately estimate the potential burden on the NGO community.

However, using a conservative calculation based on the vague definition of covered individuals, we believe the burden imposed will be much higher than the estimate USAID provided. USAID has estimated the Annual Reporting Burden to be 2000 respondents and 500 total annual hours for all categories of individuals covered by the PVS. Based on a calculation limiting the number of covered individuals at Mercy Corps to board members, senior management at headquarters and in the field, as well as key finance staff that administer funds, Mercy Corps has a potential list of 116 covered individuals. Depending on how USAID defines "administer funds" that number could increase significantly.

Using 30 minutes as the estimated time to complete and process the to-be-created and approved form, the total time burden is: 116 people x 30 minutes = 58 total employee hours for our annual registration with USAID. That total is for Mercy Corps only and does not take into account re-vetting or time spent responding to inaccurate red flags.

Extrapolating from Mercy Corps' potential burden to estimate the impact on the total NGO community, we multiplied Mercy Corps' total annual employee hours by 759 (the 609 total registered Private Voluntary Organizations and an estimated 150 unregistered applicants). Based on that calculation, we suggest the total number of hours for a one-time annual submission is 44,022 hours. The corresponding number of individuals who would be required to respond is



88,044 (116 people x 759 organizations = 88044 responses). Even controlling for differences in size of organizations, it is clear from this analysis that USAID's estimate of 2000 responses and 500 hours is grossly underestimated.

**(c) Ways to enhance the quality, utility and clarity of the information collected.**

Since USAID did not provide a clear definition of the information they intend to collect or the method by which they intend to collect it, Mercy Corps cannot provide meaningful comment on enhancing the quality, utility and clarity of an indefinite system.

**(d) Ways to minimize the burden of collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.**

Since USAID failed to follow the appropriate rulemaking procedures and has not provided any specific data regarding the information to be collected, how that data will be collected or USAID's capacity to implement the system, Mercy Corps is unable to provide useful or relevant advice on how to minimize the burden of data collection on respondents.

For the reasons stated above and in its responses to the July 17th notice and July 20th proposed rule, Mercy Corps urges USAID to reconsider the proposed Partner Vetting System, withdraw the notices and take the necessary steps to involve the impacted communities in a meaningful dialog on how USAID can ensure its funds are used for their intended purposes.

Sincerely,

  
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Its: Chief Executive Officer

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