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From: Alison Smith [ASmith@apvofm.org]
Sent: Friday, September 21, 2007 12:10 PM
To: Johnson, Beverly(M/AS/IRD); USAID Privacy; Denale, Jeffrey A(SEC/OD); Paskar, Joanne M (M/AS/IRD)
Cc: sdudley@omb.eop.gov; drostker@omb.gov
Subject: Notice of Public Information Collection, Partner Vetting System
Attachments: APVOFM paperwork reduction comment letter.doc

Attached please find APVOFM's letter regarding the Notice of Public Information Collection, Federal Register, Vol. 72, No. 140, July 23, 2007 on the Partner Vetting System.

Thank you for your consideration.
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To Whom It May Concern

This is a letter of comment concerning the "Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development" published in the *Federal Register* on July 23, 2007 (p. 40110).

The Association of Private Voluntary Organization Financial Managers (APVOFM) is a membership organization that represents the chief financial officers, grants and contracts directors, human resource managers and other administrative professionals of more than 190 organizations engaged in international humanitarian, economic development and civil society programs worldwide. Our member organizations are the recipients of hundreds of USAID grants, cooperative agreements and contracts and include most of the participants in USAID's Food for Peace (PL 480) program.

Accordingly, we are vitally interested in all administrative matters that affect these programs including the collection of information through applications, proposals, and reports. In that connection, we have previously commented to the USAID's Chief Privacy Officer concerning the July 17, 2007 *Federal Register* announcement concerning creation of the "Partner Vetting System" and the July 20, 2007 proposal rulemaking to amend 22 CFR 215 to exempt the system from numerous protection provisions of the Privacy Act of 1974. While we support the objective of seeing that USAID funds and its funded activities do not support entities or individuals associated with terrorism, we believe that most aspects of the proposed Partner Vetting System are unwarranted, poorly conceived and overly burdensome. This letter is consistent with those positions and questions those aspects of the system which are covered by the Paperwork Reduction Act and its implementing regulations. In doing so, we also assert that the proposed information collection fails to meet most, if not all of the standards for information collections set forth in the Paperwork Reduction Act (PL 104-13, 109 Stat. 173-4, Section 3506(c)(3)).

You have solicited comment on four aspects of the proposed information collections that mirror requirements contained in 5 CFR 1320.8(d)(1). Our letter responds to each of those matters in order.

1. Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.

USAID asserts, in its public notice concerning creation of the Partner Vetting System, that it needs to collect personal information concerning individuals who seek awards or benefits from USAID or who are employed by organizations that do so in order to conduct national security screening of such individuals to ensure that USAID funds do not inadvertently or otherwise provide support to entities or individuals associated with terrorism. While the agency has a statutory mandate to conduct such vetting for programs performed in the West Bank and Gaza, there is no similar statutory or executive order requirement to do so with regard to programs being conducted anywhere else in the world. Instead, under Executive Order 13324, applicants for federal awards must certify that they will not support terrorist organizations or individuals. This procedure has apparently worked quite well without the need for further vetting.

The Inspector General of USAID reported in his semi-annual report to Congress for the period covering October 1, 2006 through March 31, 2007 that his office did not identify any instances where terrorist organizations received USAID funds. Further evidence that the Partner Vetting System is a solution in search of a problem can be ascertained by comparing USAID's proposed system to the practices of other federal agencies that have similar functions to perform and have similar circumstances in which to perform them. We are not aware of any other federal agency that has a significant portfolio of federal grants and contracts and that operates in the international environment that is either operating or contemplating the operation of a similar system. When the practices of these agencies, such as the Departments of State, Health and Human Services, Labor, and Justice, are held up against this USAID proposal, it is clear that the proper performance of the functions of the agency in conducting due pre-award and post-award diligence can be accomplished without resort to this unprecedented collection of personal information from non-federal parties.

The practical utility of the proposed information collection in conducting screening is highly questionable. Collecting most of the data elements identified as "Categories of Records in the System" published on Page 39043 of the July 17 *Federal Register* notice from employing grant applicants and contract proposers is unlikely to enable USAID to identify a terrorist. Further, given

the fact that affected organizations will be engaged in employment, subgranting, and subcontracting actions on an on-going basis, continuous updating will hardly be practical. Precluding an individual with terrorist sympathies from participating or benefiting from a USAID funded program seems much more likely to occur as a result of the due diligence that grantees and contractors routinely accomplish at their level when they hire staff, award subgrants, and engage subcontractors.

2. The accuracy of the burden estimates

It has been a longstanding assertion by organizations that must do business with the federal government, from taxpayers to grantees and contractors, to regulated industries, that burden estimates associated with the Paperwork Reduction Act (PRA) are significantly inaccurate. Responsible persons who study the matter seem to agree. In testimony before the House Committee on Government Reform in June, 2005 (GAO-05-778T), the Government Accountability Office's Director of Information Management reinforced that impression by stating that "the degree to which agency burden hour estimates reflect real burden is unclear." That is a very telling statement uttered twenty-five years after initial enactment of the Paperwork Reduction Act. USAID's estimate of the burden associated with information collection (2,000 annual responses, 500 annual hours) is positive proof that such anecdotal and testimonial evidence is correct. Given that the proposed data collection form and all of the data elements that would be contained is unavailable at this time, it is impossible to know how one could estimate the amount of time that would be needed to complete the document, transferring data only some of which is in the non-federal organization's system of records into the federal format for field offices and programs with less than ideal connectivity or communication systems. Accordingly, the calculation that each response will take 15 minutes (2000 responses divided by 500 hours) has no factual basis.

Even more troublesome is the assertion that there will be 2,000 responses. This number reflects a fundamental lack of understanding of the subsystem of nonprofit and for-profit organizations with which USAID deals, their organizational governance, management, and field operations. We suggest that there are **individual organizations** which seek "USAID contracts, grants, cooperative agreements, or other types of instruments" for which the total of "individuals who are directors, officers, or are otherwise employed" will exceed 2,000—**all by themselves**. USAID's July 23, 2007 *Federal Register* announcement provides no indication how its estimate of 2,000 responses was derived—that is, whether the information collection contemplated is a one time annual submission by one organization seeking to do business with USAID or whether it will occur each time a grant application or contract proposal is submitted. It further fails to address lower tier entities such as subgrantees and subcontractors. Presumably USAID should be able to collect information on the number of grant applications and contract proposals it receives annually and could use that as the basis for the calculation. However, we strongly suspect, given the round number used in the announcement, nothing like that has occurred here.

To further test the accuracy of USAID's estimates, this Association has analyzed data concerning member organizations which it has at its disposal. For example, we annually conduct a salary and benefits survey of our member organizations and, while not all members participate, the most recent survey had 107 participating organizations that ranged in size from 29 employees to 7,258 representing 54,384 employees all together. We have no data on the number of governing board members that such organizations have, but that clearly would add significantly to the totals. Many of the data elements sought by USAID are not compiled by these non-federal organizations and in some countries, such collection would be against local law. Individual Association members are known to

be compiling specific data about their own boards, managers and employees and we understand that will be submitted to USAID in comment letters that they are drafting. We suspect that this will further demonstrate how inaccurate USAID's estimates on the subject are.

For further proof of our assertion that the estimates are inaccurate, however, one need look no further than the current "Inventory of Currently Approved Information Collections" maintained by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). A review of some of the numbers of responses associated with approved collections raises additional serious questions about USAID's July 23 announcement estimates and what was included in them.

For example, USAID is authorized to collect certain information from 85 American Schools and Hospitals Abroad; from 533 Private Voluntary Organizations; from 2,200 entities in its "Small Business Resource Database; from 351 organizations in its Minority Serving Institution Database; and from 300 Bureau for Africa summer internship applicants. It is unclear whether any of these data were used in deriving the total of 2,000 responses. However, the most revealing USAID-related entry in the Inventory relates to OMB Control Number 0412-0565. The title is "Applicant's Certification that it Does Not Support Terrorist Organizations or Individuals" and the identified number of responses in the Inventory is 4,000. While it is equally unclear how that number was derived, the fact that it is exactly twice the number being offered as related to the Partner Vetting System but deals with essentially the same subject and the same types of organizations leads to our conclusion that USAID's estimates are not at all credible. It also reinforces our impression that there is very little about the proposed system that has been sufficiently planned to be accurate or to limit burden, as required by the Paperwork Reduction Act.

3. Ways to enhance the quality, utility, and clarity of the information collected

Inasmuch as we are troubled by the weak rationale for development of the Partner Vetting System and have so stated in a previous detailed letter to the USAID's Chief Privacy Officer, we are concerned that this portion of the solicitation for comments almost assumes that the subject information will be collected and, thus, we should concern ourselves with how to make the information better. However, a cogent response to that inquiry is made all the more difficult by the fact that the data collection form has not been released and the data elements that would be contained in it are couched in terms of "includes, but is not limited to." Further, affected organizations have no way of knowing, given USAID's proposal to shield the data from Privacy Act disclosure, what additional information will be added to that which would be supplied by grant applicants and contract proposers and what sources would be relied upon to supply it. Under these circumstances, we believe that data verification and quality control procedures must be built into this or any alternative system that will be used to screen individuals. We strongly suggest that USAID consult with other federal agencies including the General Services Administration, the Treasury Department's Office of Foreign Assets Control; and Justice Department that currently operate screening systems related to federal awards or other matters to glean "best practices" concerning sampling and data accuracy verification.

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

Once again, this line of inquiry assumes that the information identified **will** be collected. We will continue to suggest that the Partner Vetting System in its proposed form should be withdrawn and not pursued. However, we believe that one specific suggestion about burden reduction demonstrates why radical departure from the methods chosen by USAID is warranted.

USAID proposes to collect the information about individuals at the time of application for contracts, grants, and cooperative agreements and other funding or application for registration as Private Voluntary Organizations. The problem with such timing is that no funding or benefit results from that action. The intended purpose of the Partner Vetting System is to ensure that no USAID funds and USAID funded activities provide support to entities or individuals deemed to be a risk to national security. Registration as a Private Voluntary Organization provides no funding or other financial benefit so vetting of listed individuals at that point accomplishes nothing. This portion of the information collection should be eliminated. Further, vetting at the time of application, for all applicants, would collect information on individuals who work for organizations that are not going to be funded for reasons that have nothing to do with terrorism.

We suggest that USAID find a method to conduct whatever vetting is going to take place later in the pre-award process after the apparent successful applicants have been identified. This was the method used in regulations (22 CFR 226.91) related to marking and branding requirements affecting assistance recipients. This would serve to substantially reduce the number of organizations that might be required to submit personnel information.

Our community shares the goal that USAID funds not support individuals or groups associated with terrorism. We do not, however, believe that the proposed Partner Vetting System would give any greater assurance of that than the existing system. There has been no indication that the current procedures and requirements are ineffective. We believe that the proposed PVS would damage our Foreign Policy objectives by discouraging groups from taking USAID funds or working with agencies that do, by using PVOs as an extension of the intelligence arm of the US Government, and by jeopardizing the safety and security of the staff of implementing agencies. Further it would necessitate agencies spending substantial resources both personnel and monetary which could more productively be spent assisting the communities we endeavor to help. We respectfully request that USAID withdraw all of its existing proposals related to the Partner Vetting System. The current procedures and requirements have proven adequate and accomplish the desired objective without imposing additional and unwarranted burden.

Sincerely,
Alison N. Smith
Executive Director

cc. Susan Dudley, Administrator OIRA (by email: sdudley@omb.eop.gov)
David Rostker, Desk Officer for USAID, OIRA (by email: drostker@omb.gov)