

Johnson, Beverly(M/AS/IRD)

From: Mary Mares [mares@freedomhouse.org]
Sent: Friday, November 30, 2007 4:50 PM
To: Denale, Jeffrey A(SEC/OD); Heneghan, Phil(M/CIO/CISO); Johnson, Beverly(M/AS/IRD)
Subject: Notice of Public Information Collection, Federal Register, Vol. 72, No. 190, October 2, 2007;
Title: Partner Information Form; Type of Review: NEW Information Collection
Attachments: Letter re 10-02-07 Fed Reg Notice.doc

Please see attached letter.

Thank you.

Mary Mares
Freedom House
202.747.7028

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November 30, 2007

SUBMITTED VIA EMAIL TO: jdenale@usaid.gov, pheneghan@usaid.gov, and bjohnson@usaid.gov

Mr. Jeff Denale
Coordinator for Counterterrorism
Office of Security
U.S. Agency for International Development
Room 2 07-106, RRB
Washington, D.C. 20523

RE: Notice of Public Information Collection, Federal Register, Vol. 72, No. 190, October 2, 2007
Title: Partner Information Form
Type of Review: NEW Information Collection

Dear Mr. Denale:

The comments provided herein are submitted in response to the announcement published in the *Federal Register* on October 2, 2007, (Vol. 72, No. 190, pp. 56041-56044) proposing to collect information from all individuals and organizations receiving USAID awards for a Partner Vetting System (PVS). The undersigned organizations respectfully reiterate our concerns about the PVS as expressed in our August 27, 2007, comment letter, about the requested exemptions to the Privacy Act as noted in our September 18, 2007, comment letter, and about the necessity for the collection of information and the accuracy of the burden estimates as outlined in our September 21, 2007, comment letter (comment letters submitted in response to the *Federal Register* notices of July 17, 2007, July 20, 2007, and July 23, 2007, respectively).

As leading nongovernmental organizations working to promote democracy worldwide, we are committed to ensuring that the USAID funds we receive are not provided to entities or individuals associated with terrorism and to complying with Executive Order 13224 and other requirements. As such, we verify that individuals and entities to which we provide material or financial support are not on the terrorist watch lists and accordingly sign anti-terrorism financing certifications. However, we respectfully request that the PVS be withdrawn for the following reasons:

- USAID has not demonstrated a need for the PVS nor is the collection of information necessary for the proper performance of the Agency;
- The burden estimates provided in the notice are woefully underestimated;
- The exemptions requested to the Privacy Act undermine its basic principles and curtail due process;

- The Partner Information Form and its instructions are confusing and include references to provision of “technical assistance,” implying the vetting of and disclosure of personal information on program beneficiaries to USAID;
- The PVS, as currently outlined, lacks sufficient safeguards to protect individuals’ personal data;
- All aspects of the Partner Vetting System, including the information collection process mandated by USAID/West Bank & Gaza in Mission Order 21 and referred to verbally by USAID/Washington as the “pilot program,” are subject to the Paperwork Reduction Act; and
- The impact of such a system on programs has not been considered and could be an impediment to larger U.S. foreign policy goals.

No demonstrated need and the collection of information is not necessary for the proper performance of the functions of the Agency

USAID has not demonstrated that the current procedures and requirements are insufficient or ineffective in complying with Executive Order 13224. The one instance cited by USAID in public discussions whereby funds were provided to the Islamic University of Gaza, which was later determined to have connections to Hamas, does not reflect a problem with existing certification or vetting procedures, but rather a lapse in judgment that would not be ameliorated by the PVS.

Further, in terms of functions, USAID is the principal U.S. agency that provides assistance to countries and advances U.S. foreign policy objectives by supporting economic growth, agriculture and trade; global health; and democracy, conflict prevention and humanitarian assistance. It is not a law enforcement or intelligence gathering agency.

Therefore, we assert that the proposed collection of information is not necessary for the proper performance of the functions of USAID.

Burden estimates are underestimated

We find the burden estimates provided in the above-referenced notice woefully underestimated. Further, we respectfully note that the burden estimates remain unchanged from the July 23, 2007, notice despite USAID receiving numerous comments in response that demonstrated the inaccuracy of the burden estimates. This sends a clear message to the recipient community that its comments are not being considered.

As previously expressed in our September 21, 2007, comment letter, the notice states that USAID “intends to collect information from approximately 2,000 individuals and/or officers of nongovernmental organizations.” It also states that USAID anticipates that there will be 2,000 respondents annually. Individuals/officers and respondents are not synonymous. Respondents refer to the number of organizations (PVOs, NGOs and contractors) and individuals (personal service contractors) that would respond to an inquiry. In terms of actual respondents, while there is no up-to-date information available on USAID’s website on the total number of organizations (PVOs, NGOs and contractors) and individuals to whom the Agency provides awards, we

suggest that it is more than 2,000. Therefore, based on the broad definition of "principal officers" listed in the July 17, 2007, notice on the establishment of the PVS, we respectfully submit that the number of *individuals* on whom USAID would collect information would logically be significantly higher than 2,000.

Second, the notice estimates the total annual responses also as 2,000. This implies that each organization/individual (respondent) would only respond once per year. Given that the majority of organizations submit several proposals each year to USAID, this figure is also inaccurate.

Third, USAID calculates that each response will take only 15 minutes (2,000 responses divided by 500 hours annually). This presumes that organizations have the requested detailed information, including date and place of birth and nicknames of individuals, in a centralized system and that a designated individual would be responsible for completing the Partner Information Form. It is unclear on what basis these assumptions were made.

In using our organizations (seven respondents) as an example and a *conservative* determination of the number of individuals who would be considered "principal officers" and a *conservative* estimate of the time to complete the form (8 hours, as all requested information and centralized systems to manage data may not be in place), we calculated the following:

Number of responses per year per organization:	between 20 and 50
Number of individuals per response:	between 25 and 42
Number of individuals vetted annually:	between 500 and 2,100
Total annual hourly burden:	between 160 and 400 per organization

Therefore, for only seven respondents, the total annual hourly burden could be as much as 2,800 hours.

The above figures do not take into account changes in personnel during the course of a year or the much broader language in the July 17, 2007, notice of "other employees," which implies that any and all employees of an organization are subject to the vetting procedures of the PVS. The October 2, 2007, notice fails to more clearly define the individuals to be vetted. Further, there is no consideration or discussion about the costs an organization would incur to establish and maintain an internal information system or to hire staff to manage it, particularly given the sensitive nature of the personal data.

Based on the above, we contend that the burden estimates provided in the notice and included in the Public Burden Statement of the Partner Information Form are inaccurate and unrealistic.

Requested exemptions to the Privacy Act undermine its basic principles and curtail due process, and law enforcement exceptions to the Privacy Act do not apply to USAID

The Privacy Act is intended to "promote accountability, responsibility, legislative oversight and open government with respect to the use of computer technology in the personal information systems and data banks of the Federal Government." Congress determined that "the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of

personal information by Federal agencies,” and recognized that “the right to privacy is a personal and fundamental right protected by the Constitution of the United States.” It thus sought to “provide certain protections for an individual against an invasion of personal privacy” by establishing a set of procedural and substantive rights, including access to the records, ability to amend or correct inaccurate, irrelevant and incomplete records, notice of sharing the records with third parties, and limits on the type of information collected and maintained.

USAID proposes to exempt certain information from the Privacy Act, thereby denying individuals these rights, specifically the rights to access information and to amend or correct it. In essence, USAID is proposing to maintain a secret information system. Efforts to combat terrorism cannot be used as the universal excuse by the government to intrude upon basic individual privacy rights. Moreover, a recent report issued by the Inspector General of the Department of Justice noted that the government’s master watch list was marred by errors and inconsistencies. Denying individuals the rights to access and to correct any errors could result in the unnecessary delay or possible denial of awards to recipients due to misinformation and ultimately impact the ability of USAID to provide timely development assistance.

While the Privacy Act does provide exemptions for law enforcement agencies, as it would be counterproductive to provide suspected criminals the ability to request files on current investigations, USAID is not a law enforcement agency. Therefore, its request to exempt certain information from the Privacy Act for law enforcement purposes is inappropriate. Further, since the July 20, 2007 notice, there has been no indication that any exceptions to the Privacy Act have been granted. We find the inclusion of the Privacy Act Statement in the form attached to the October 2, 2007 notice, which specifically states that Privacy Act exceptions apply to the PVS, pre-mature as well as inaccurate.

Partner Information Form is confusing and the instructions are not clear

Several questions and concerns arose following a review of the Partner Information Form, including the following:

- The form lacks an overall explanation of when and who should complete the form;
- While recipients are required to check the terrorist watch checklists before providing funds to subgrantees, Question 2 implies that the form must be completed for subgrants and subcontracts, yet none of the notices have indicated this information was to be collected and disclosed to USAID;
- There are no definitions provided for “training” or “other” categories, which appear in Question 2;
- The use of “equipment” in Question 2 implies that upon the end of an award if a recipient transfers a vehicle to a local partner that it must also complete the form, although this is not clearly specified in the instructions nor stated in the notices;
- Question 3 is unclear whether this is the amount of the recipient’s award or the subgrantee’s;
- Question 5 would seem redundant to Question 1 if the recipient is completing the form for itself; and

- The use of “in-kind assistance (including technical assistance)” in Question 6 could be interpreted as disclosing personal information on program beneficiaries to the U.S. Government to be vetted as possible threats to the national security of the U.S.; given the sensitive nature of democracy programming and the high-level political positions many beneficiaries hold, we find this language troubling, to say the least.

Overall, we find the form to be lacking in complete instructions and, quite possibly, contrary to information provided in the *Federal Register* notices.

Sufficient safeguards do not exist to protect individuals’ personal data

Similar to the previous notices, the October 2, 2007, notice fails to identify a secure method by which organizations would transmit the information and to address the concerns about USAID maintaining personal data, such as social security and passport numbers, in various locations overseas and in Washington, D.C. In an era of rising identity theft, we find the proposed safeguards outlined in the July 17, 2007, inadequate and USAID unresponsive to the concerns raised.

All aspects of the PVS, including the “pilot program” in West Bank and Gaza, are subject to the Paperwork Reduction Act

As an “agency,” USAID is subject to the Paperwork Reduction Act (PRA), and the only statutory exceptions to the PRA are as follows: [i] federal criminal matters/actions; [ii] civil actions and agency litigation or investigation; [iii] compulsory process issued in connection with antitrust proceedings; and [iv] federal intelligence activities carried out under an Executive Order. None of these apply to USAID, including [iv] since its primary purpose is not law enforcement or intelligence gathering. Therefore, the information collection process outlined in USAID West Bank and Gaza’s Mission Order 21 is also subject to the PRA, and we find that USAID did not follow the appropriate procedures and regulations prior to issuing the order.

If a vetting system is indeed necessary for the West Bank and Gaza, engagement with the NGO/PVO community on the form, process and implementation would likely yield a better product, one that would meet needs but not alienate local partners, impede programs or potentially jeopardize U.S. foreign policy objectives.

Further, while USAID has made verbal comments in public meetings that the PVS will not be implemented globally yet, but rather the West Bank and Gaza system will serve as the pilot, the fact remains that the PVS became effective on August 27 – the same day public comments on it were due, thereby indicating the comments and concerns would not be considered. Subsequent notices in the *Federal Register*, including the October 2, 2007, notice, have not retracted the PVS nor indicated that it would only be “tested” in the West Bank and Gaza. We find the notices and USAID’s public comments, including those quoted in *The Washington Post*, inconsistent and contradictory.

Lack of analysis of impact of PVS on programs and overall U.S. foreign policy goals

The Notice does not address the potential impact – financial, legal and programmatic – of the PVS on USAID's development assistance programs. Together we employ thousands of men and women in more than 60 countries around the world, and many are third country or host country nationals whose own laws may restrict the provision of personal information without their express consent. In order to comply with the PVS, we may have to obtain consent from employees to waive any privacy protections afforded to them in their respective countries. Given that an employee may choose not to waive his/her right or that such a waiver is arguably not legally permitted or recognized in an employment context, an organization may be required to fire that employee for no sound reason, simply in order to remain in compliance with USAID's PVS requirements. This type of employment action, based solely on a person's citizenship or failure to provide certain personal information, may subject organizations to claims of discrimination and potential lawsuits.

In countries in which the American NGO community is currently experiencing a backlash to democracy programs it is quite possible that the PVS could result in the enactment of laws prohibiting the disclosure of personal information to foreign organizations or foreign government agencies, thereby putting staff members at greater legal risk and further inhibiting our ability to work with local partners and to implement programs.

While the notices in the *Federal Register* did not specifically mention that personal information on individuals associated with local groups to whom we may award subgrants was to be collected and disclosed to USAID, as noted above, the Partner Information Form suggests that this is the case. This will surely be alienating and disrupting to the trust-building process that is central to our work in democracy promotion, as well as to all organizations providing development assistance. At a time when the challenges to the American effort to foster democratic change worldwide are mounting, the PVS will add another degree of difficulty to our task. As local partners learn of the need to provide personal data to security agencies of the U.S. Government to be vetted as possible threats to the national security interests of the U.S. – and in the particular manner envisioned, that will provide neither for security of the data nor permit an opportunity to appeal adverse decisions or correct erroneous information – the proposition that we and the U.S. Government promote democracy as a value unto itself will be harder and harder to defend.

There are other ways to address the very real problem of terrorism in the world that would be more consistent with the letter and spirit of American law, less burdensome to USAID and all its partners, and less likely to alienate those with whom we seek to work on strengthening the prospects for democratic governance abroad.

Therefore, for the reasons outlined in this letter, we respectfully request that USAID withdraw the Partner Vetting System.

Sincerely,



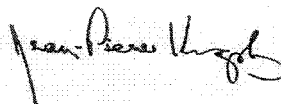
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Executive Director
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