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January 5, 2012

VIA Email to: OIRA_Submission@omb.eop.gov

AMERICAN CIVIL LIBERTIES UNION
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Office of Information and Regulatory Affairs
United States Agency for International Development

Re: U.S. Agency for International Development (USAID) Nov. 30, 2011, "Notice of Public Information Collection Requirements Submitted to OMB for Review," Vol. 76, Fed. Reg. No. 235, p. 76539, OMB Number 0412-0577, Form No. AID 500-13, "Partner Information Form" (the "Notice")

To Whom It May Concern,

The ACLU is an organization committed to protecting the civil liberties guaranteed by the United States Constitution. We are writing in response to USAID's Notice requesting public comments concerning USAID's use of a Partner Information Form to collect personally identifiable information in order "to conduct screening to ensure that neither USAID funds nor USAID-funded activities inadvertently provide support to entities or individuals associated with terrorism."

On three previous occasions, the ACLU has submitted public comments to USAID concerning the USAID Partner Vetting System (see August 27 and December 3, 2007 letters to Mr. Philip Heneghan, Chief Privacy Officer, USAID, and March 4, 2009 letter to Ms. Rhonda Turnbow, Chief Privacy Officer, USAID, attached hereto). While some of our comments have been addressed, the ACLU continues to have fundamental concerns with aspects of the Partner Vetting System. These concerns regard the lack of due process and transparency in the proposed screening, the overbroad scope of the individuals whose information is to be collected, and the privacy implications of collecting such highly personal, confidential information and sharing it across agencies. The ACLU also continues believe that USAID has failed to demonstrate that implementing the Partner Vetting System is necessary.

While USAID's November 30 Notice seeks public comments regarding its new information collection program, to our knowledge USAID

has published few details regarding the program. The Notice itself merely announces it will begin collecting information from individuals and/or officers of non-governmental organizations who apply for USAID funding or registration using USAID form AID 500-13. Without knowing these details, the ACLU has little basis on which to comment on the program and whether its implementation will heighten or mitigate our concerns, or raise new concerns.

We recommend that USAID publish details regarding the program and permit the public to provide full and meaningful comments.

Sincerely,

AMERICAN CIVIL
LIBERTIES UNION

Terence Dougherty, Esq.
General Counsel

Attachments

DOROTHY M. EHRLICH
DEPUTY EXECUTIVE DIRECTOR

ACLU
AMERICAN CIVIL LIBERTIES UNION

December 3, 2007

Mr. Philip M. Heneghan
Chief Privacy Officer
United States Agency for International Development
1300 Pennsylvania Avenue NW
Office 2.12-003
Washington, DC 20523-2120

Dear Mr. Heneghan:

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RICHARD ZACKS
TREASURER

The ACLU is an organization committed to protecting the civil liberties guaranteed by the United States Constitution. On August 27th of this year we submitted comments concerning Notices about the proposed Partner Vetting System (PVS). Now that the period for comments has been extended through December 3, 2007, we would like to add additional comments concerning the new Partner Information Form that has been drafted.

First, this form appears to apply to sub-grantees, but there has been no previous mention that sub-grantees would be vetted in this manner. This raises due process concerns, as none of the affected groups has had a chance to consider this issue until this point, and no notice was given of the inclusion of sub-grantees apart from the form itself.

Second, the form is overly broad in its definition of "key individual" with regard to question six. This term is defined to include "any…person with significant responsibilities for administration of the USG-financed activities or resources" (Partner Information Form Instructions). We feel this is far too general a description, given the detailed information required of such individuals. This could potentially cover nearly everyone in smaller organizations.

Finally, the burden is projected to be only 15 minutes, but we feel this is a vast under-estimation. Given the specific information requested, it will likely take far more than 15 minutes to compile all required data.

Very Truly Yours,

Terence Dougherty
General Counsel

Dorothy M. Ehrlich
Deputy Executive Director

March 4, 2009

Ms. Rhonda Turnbow
Chief Privacy Officer
United States Agency for International Development
1300 Pennsylvania Avenue NW
Office 2.12-003
Washington, DC 20523-2120

BY ELECTRONIC MAIL TO: privacy@usaid.gov

Dear Ms. Turnbow:

The ACLU is an organization committed to protecting the civil liberties guaranteed by the United States Constitution. On August 27th and December 3rd of 2007 we submitted comments concerning Notices about the proposed Partner Vetting System (PVS), which I am including here. Now that the new Administration has taken office, we would like to reiterate our previous points and give additional comments regarding our concerns with the implementation of the Partner Vetting System ("PVS").

We want to highlight one aspect of the new proposed rule, which is the exemption that will be granted the PVS under the Privacy Act. Apart from the procedural concerns that have been raised by other commenters about the exemption from the Privacy Act that the PVS will receive, we also have concerns regarding due process and transparency.

Under the new rule an applicant must wait until he or she is denied funding before being given the opportunity to provide clarifying information. Additionally, applicants may not even learn exactly why they were denied, since USAID may protect certain information due to "security concerns." While we do recognize that the final rule does take into consideration some of the due process complaints voiced in previous comments, we still think this leaves USAID with too much discretion about what information it will reveal. If an applicant is not given a meaningful opportunity to learn why he or she was denied funding, he or she may never know, for example, that his or her name is on a watch list, and as we've seen countless times these past 8 years, these security watch lists contain many errors and are subject to abuse.

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Additionally, we have concerns about the vagueness of the language used in the vetting criteria under this rule. It is unclear what exactly qualifies as "supporting" or "being affiliated with" an organization or individual engaged in "terrorist activities." Is support limited solely to the organization's programming? How is "terrorist activities" defined? What relationships qualify as affiliation? We believe any policy governing who can receive USAID funds should only require recipients to abide by applicable anti-terrorism financing and asset control laws, statutes and executive orders. This allows for assurance that grantee organizations will abide by the law and refrains from imposing any additional burdens.

We ask you to please reconsider these important issues as you decide if and how to implement this new rule as it is currently formulated. We believe serious due process, vagueness, and transparency issues still remain in this final version of the PVS.

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Very Truly Yours,

Terence Dougherty
General Counsel

Julie Strom
Associate Corporate Counsel

DOROTHY M. EHRLICH
DEPUTY EXECUTIVE DIRECTOR

August 27, 2007

Mr. Philip M. Heneghan
Chief Privacy Officer
United States Agency for International Development
1300 Pennsylvania Avenue NW
Office 2.12-003
Washington, DC 20523-2120

BY ELECTRONIC MAIL TO: privacy@usaid.gov

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Dear Mr. Heneghan:

The ACLU is an organization committed to protecting the civil liberties guaranteed by the United States Constitution. We are submitting comments concerning Notices published in the Federal Register on July 17, 20 and 23 concerning the proposed Partner Vetting System (PVS).

First, the ACLU strongly urges USAID to postpone implementation of the PVS until the Agency has had time to receive and respond to comments from individuals and organizations that have an interest in the PVS, and particularly from those individuals and NGOs who receive USAID funds. We strongly oppose making the PVS effective Monday, August 27, the same day as the deadline for receiving comments. We understand that you are considering postponing the effective date until you've had the opportunity to thoroughly and meaningfully review the comments you've received, and we think that would be the correct decision.

Additionally, it is not clear to us what USAID's basis is for concluding that it is necessary to implement the PVS, as USAID has not conclusively demonstrated that its funds have been used for criminal activities associated with terrorism or wound up in the hands of individuals or organizations responsible for such criminal activities. Nor has USAID demonstrated that the PVS will be an effective means of ensuring its funds are not used for such purposes and do not wind up in such hands. This is particularly problematic given that the PVS is not a program that is required by statute; in fact, questions are raised about whether the PVS may actually exceed the authority granted to USAID by Congress.

Further, the opaqueness of the PVS raises serious concerns for the ACLU. It is not clear what USAID itself will do with the information it collects and to which other governmental agencies it will give the information. The fact that USAID will not confirm to individuals or entities that its denial of funds or

refusal to enter into a contract with those individuals or entities is a result of their having failed its undisclosed screening process, and the fact that there appears to be no effective means of challenging such denial or refusal, raises serious due process concerns. To the extent USAID or other governmental entities will check individual and entity names collected against the so-called terrorist watch lists, the ACLU objects to this practice (much as it objects to any requirement that NGOs that are USAID applicants must screen their own employees against such lists) in light of the fact that the lists are error-filled and unreliable, with many false positives, and there is no effective means for challenging the fact that one is on the list. Again, this lack of due process raises significant concerns.

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Finally, the information USAID is seeking under the PVS is highly personal, confidential information concerning individuals--including social security and passport numbers, mailing and email addresses, telephone and fax numbers and information concerning national origin and citizenship. The creation of such a database by USAID and the fact that it, or portions of it, will be shared with other governmental entities raises privacy concerns that should be thought through more critically.

In light of the above reasons, we believe that the PVS proposal should be withdrawn or, at the very least, its effective date should be postponed until there has been a reasonable notice and comment period to ensure that USAID takes all interested parties' views into consideration.

Very truly yours,

Terence Dougherty
General Counsel

Dorothy M. Ehrlich
Deputy Executive Director