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17 February 2012

Submitted Electronically: oira_submission@omb.eop.gov

Department of State Desk Officer
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

**Re: 30-Day Notice of Proposed Information Collection: DS-4164
OMB Control #1405-XXXX**

To Whom It May Concern:

I write on behalf of Catholic Relief Services – United States Conference of Catholic Bishops in response to the 30-Day Notice of Proposed Information Collection: DS-4164, Risk Analysis and Management, published in the Federal Register on January 18, 2012 Vol. 77 No. 11 (p.2601). [The Information Collection Form received from the Department of State contact for further information was labeled as DS-4184 and not DS-4164. The Federal Register notice referred to two different form numbers; DS-4164 in the title and DS-4184 in the body of the notice.]

Founded in 1943, Catholic Relief Services (CRS) is the official international humanitarian agency of the Catholic community in the United States. We alleviate suffering and provide assistance to people in need in nearly 100 countries, without regard to race, religion or nationality. CRS programs touch more than 100 million lives. Our relief and development work is accomplished through programs of emergency response, HIV, health, agriculture, education, microfinance and peacebuilding.

The above referenced notice seeks comments that will permit United States Department of State (DOS) to evaluate whether the proposed information collection is: a) necessary for the proper performance of agency functions, and b) to evaluate the accuracy of burden estimates and the validity of the methodology and assumptions used. We offer the following

observations on those matters and on the Risk Management and Analysis form that the DOS proposes to use for the joint Partner Vetting System (PVS) pilot program with the United States Agency for International Development (USAID).

Catholic Relief Services previously commented to DOS on the Notice of Proposed Information Collection: DS-4184, Risk Management and Analysis, published in the Federal Register on October 20, 2011 (p.65317). We expected as part of the Information Collection process that DOS would publically publish in the Federal Register their responses to comments received while making adjustments to the burden estimates reported to OMB and to the collection process and form in consideration of those comments. The second notice in January 2012 reflected no adjustments whatsoever. Given the significant impact this collection would have on the recipient community operating overseas, we ask OMB to monitor closely transparency, adequate consideration of stakeholders input and adjustments to the data collection process.

1. Need for Documented Procedures on PVS Pilot

The Consolidated Appropriations Act of 2010, as carried forward in the FY 2011 Full-year Continuing Resolution, prohibits DOS from expending any appropriated funds on a partner vetting system except in the case of a pilot program. Pursuant to the Conference Report accompanying the Consolidated Appropriations Act of 2010, the pilot program is to be limited in “up to five countries and in Washington.”

According to a Status Report issued jointly by the U.S. Department of State and the U.S. Agency for International Development at a public meeting on the PVS Pilot Program on September 8, 2011, it was stated that final rules regarding Partner Vetting in USAID Acquisitions and Partner Vetting in Grants would be issued in September 2011. To our knowledge, no such rules have been issued.

Without final rules on how the system will work, there is no context to understand how the proposed RAM information collection form will be used. As such, it is extremely difficult to accurately judge the necessity, burden, and validity of methodology as to the form and its use within the PVS pilot and/or RAM. A standard and uniform information collection form should be re-issued for public comment at the same time the PVS pilot procedures and/or RAM pilot procedures are provided to the public for comment. We ask OMB to ensure that rule making processes are followed, and notice of a proposed rule relative to RAM and/or PVS pilot is issued before finalization of a form.

2. Information Collection Authority

Form DS-4184 solicits information concerning Afghanistan projects. According to the September 8, 2011 Status Report referenced above, the five countries selected for the pilot program include Guatemala, Kenya, Lebanon, the Philippines, and Ukraine. Conspicuously, Afghanistan is not included among the five pilot program countries. Therefore, solicitation

of Afghanistan project information is unnecessary for the pilot program and should be removed from the form.

CRS is deeply concerned that inclusion of Afghanistan specific sections in Form DS-4184 indicates DOS' intention to expand the PVS pilot program beyond the five pilot countries.

Any rollout, expansion, or use of a partner vetting system in Afghanistan would be directly contrary to statutory limitations found in the Consolidated Appropriations Act of 2010. CRS encourages DOS to refrain from any expansion of PVS until 1) the pilot program has been implemented in the five pilot countries, 2) there has been opportunity for independent evaluation of the program's impact on foreign assistance, and 3) there is statutory authority in place for such an expansion.

3. Need for Standardization

Since the PVS pilot program was Congressionally-mandated as a joint DOS and USAID pilot, we were surprised to see that each agency is developing a unique form using diverse titles (Partner Information Form vs Risk Analysis Information; PVS vs RAM). USAID, on December 7, 2011 published a Federal Register notice concerning information collection under its program which would be accomplished using a different form (AID 500-13, Partner Information Form). The Congressional instructions are that any such program "shall apply equally to the programs and activities" of both agencies. This non standardization of information collection forms represents an increased and unnecessary burden on respondents.

4. RAM's Necessary "for the proper performance of agency functions"

As stewards of resources entrusted to us by donors, CRS shares the State Department's commitment to ensure that funds are effectively delivered to those intended and not diverted in breach of the law and national interests. This commitment is realized in the systems CRS has in place to verify eligibility of parties prior to business transactions in order to avert any misuse of funds. These systems include checking the names of staff and subrecipients against the master list of Specially Designated Nationals and Blocked Persons maintained by the Department of Treasury's Office of Foreign Assets Control (OFAC), the State Department and FBI exclusion lists, the list of debarred and suspended parties as well as the UN 1267 Committee Consolidated List and the European Union List maintained by the Bank of England. Further, in implementing State Department or USAID funded humanitarian and development assistance programs, CRS is required to certify that we will not knowingly provide funds or material support to any individual or organization that advocates or commits terrorism. With these certifications and systems in place, DOS and USAID vetting is duplicative, unnecessary and burdensome.

CRS also relies on close personal relationships with subrecipients, many of whom are local, which have been built over time and involve regular contact before and during subaward implementation. Standard CRS practices of pre-award due diligence including reference

checks of individuals and partner agencies, program and site visits, and personal interviews asking for lists of other donors, partners and prior experience enhance this familiarity. More than mere list checking, these processes allow CRS to have substantive understanding about the people with whom we work. This familiarity puts CRS in the best position to screen whether subrecipients or their employees are affiliated with terrorist or criminal organizations.

These systems have effectively screened potential employees and subrecipients over many decades. There has been little evidence provided to indicate that these due diligence activities are ineffective. A State Department and USAID requirement for NGOs to collect additional, often personal, information of employees and partner organizations, for DOS and USAID use in connection with the USG non-public database, is an unnecessary burden for NGOs.

5. Adverse Affects of Information Collection

A. Perception of NGOs as intelligence sources for U.S. government versus independent and neutral actors

As with most NGOs, CRS' foreign assistance programs are effectively achieved through people-to-people, nongovernmental interaction. To carry out the goals of such programs, U.S. NGOs that share knowledge, information and experience with indigenous groups and individuals must maintain their independence and neutrality. In many highly polarized political environments, where accusations that foreign governments are undermining the host country's sovereignty are common, protection of neutrality and independence are critical. Since the employees of CRS and our local subrecipients could be vetted against secret lists maintained by the U.S. government intelligence agencies and have their information permanently collected, the likely perception overseas could be that CRS is a direct, intelligence-gathering source for the U.S. government. This perception could put into jeopardy the trust-building process that is central to our work as well as the basic principles of NGOs and their programs – neutrality, trust and independence. Several CRS potential local subrecipients have indicated refusal to partner with CRS if collection of personal data for USG vetting is required; thus, negatively impacting program implementation and quality by limiting the pool of high performance subrecipients.

B. Increased security risk for staff and local partners

CRS is concerned that the Partner Vetting System puts DOS and USAID prime recipient employees and local subrecipients at even greater risk. The perception, described above, that NGOs collecting the personal information are operating as an extension of U.S. law enforcement and intelligence agencies, undermines the basic principles of acceptance, neutrality and trust upon which NGOs rely to preserve the safety of their staff and operations, particularly in dangerous regions or in politically sensitive environments. Rather than “enhancing” security, requiring NGOs to collect and turn-over personal information to the U.S. government increases the risk of violence against staff. Out of concern for their safety, some local staff have indicated that their continued employment with CRS is contingent on CRS not turning over

their personal data for USG vetting. Several CRS potential local subrecipients have indicated refusal to partner with CRS if collection of personal data on their staff for USG vetting is required as it creates a security risk for their staff.

C. Local legal implications

The legal implications for CRS cannot be understated when and if we are being required to contravene foreign laws by disclosing personal data for non-American employees. In the absence of operational information on the PVS and whether it will include a waiver provision to allow NGOs to avoid contravening local law, it is impossible to comment on the acceptability of the RAM data collection form.

6. Administrative burdens

It is extremely difficult to judge the accuracy of the burden estimate listed because the parameters of the pilot PVS and/or RAM have not yet been made public. An information sheet provided in a public meeting held on September 8, 2011 stated that the specifics of the pilot were still being designed by an interagency team. Without any knowledge of, for example, the number and types of grants that will be vetted in the five pilot countries based on the undefined “risk-based model” and the timing of the vetting e.g. each time new staff are added, with each funding renewal, or simply upon first application, the burden is unclear. Thus the amount of time necessary to do so cannot be estimated. Further, the public meeting materials state that the pilot’s “projected outcomes” include “collection of data on the number of grants and contracts impacted by vetting and financial information to conduct a cost/benefit analysis,” suggesting that there is no basis yet for making a true estimate of the burden.

Data on CRS subrecipient “key individuals” as defined in DS-4184 is not currently collected by CRS. It would involve a new collection process. The collection and maintenance of the vast amounts of personal data requires CRS to develop even more extensive and secure data management systems and to hire additional staff to manage the data and process. The costs for such resources are significant and often cannot be a direct grant expense. To alleviate this burden DOS and USAID should, at the very least, work to coordinate the various reporting requirements.

Nothing contained in the notice provides any basis for our understanding of the validity of the methodology and assumptions used to construct the burden estimates. We understand from the above-mentioned September 8 briefing that the intent of the pilot is to collect data from applicants and offerors for awards in five countries—Guatemala, Philippines, Ukraine, Lebanon and Kenya. However, we have no way of knowing whether the 1,250 respondents identified in the notice represent the number of entities that compete for grants and contracts to perform in those countries and what period that data covers.

The fact that there are no published breakdown between those organizations that are assumed to be prime grantees or prime contractors versus those that are assumed to be

seeking awards at the next lower tier raises into question the accuracy of the burden estimate since involvement by such lower tier entities necessarily follows program designs that are at times unknown at the time of proposal submission.

CRS appreciates OMB's solicitation of comments and its careful consideration of recipient community experiences, impact analysis and suggestions. We continue to emphasize that the PVS and/or RAM is not adequately designed to protect NGO workers and partners and represents an undesirable redefinition of the relationship between recipients and the federal government, endangering aid and development work and consequently harming U.S. national interests. Thank you for the opportunity to publically voice our concerns.

Yours truly,

A handwritten signature in black ink, reading "Robert Augustine Twele". The signature is fluid and cursive, with a long horizontal flourish extending to the left.

Robert Augustine Twele, Esq.
Director - Office of Legal Counsel

RT/wp