



The largest alliance of U.S.-based international nongovernmental organizations focused on the world's poor and most vulnerable people.

March 30th, 2015

RE: Department of State Public Notice 9015 (January 28th, 2015); Document 80 FR 4618;
Document Number 2015-01590.

Emailed to: FARRELLM1@state.gov

Lisa M. Farrell
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

Dear Ms. Farrell,

On behalf of InterAction, the largest alliance of over 180 U.S.-based humanitarian and international development non-governmental organizations (NGOs), I am writing in response to your request for comments regarding the Department of State's Risk Analysis and Management (RAM) pilot vetting system.

Our members operate worldwide, leveraging over \$8 billion in private funding and nearly \$4 billion in government funding to help the world's affected and marginalized people rebuild their lives and develop sustainable communities. As stewards of these resources, we share the U.S. government's commitment to ensuring that charitable funds are effectively delivered to people in need and not diverted to individuals or entities that pose a threat to national security. We sincerely appreciate the opportunity to provide these comments in response to the proposed extension of the implementation of RAM.

In your notice to extend RAM, you state that the Department of State is soliciting comments to *"evaluate whether the proposed information collection is necessary for proper functions of the Department."* As implementing partners for the Department, our member organizations strongly believe that the Department of State's program objectives cannot be achieved unless the vetting system (1) preserves the neutrality, impartiality and independence of NGOs, (2) is designed so as not to jeopardize the safety and security of NGO workers and local partners, and (3) otherwise preserves the ability for U.S. NGOs to work with local partners and build local capacity.

The proposed rule should be revised to explicitly address these fundamental requirements, and to explicitly recognize that addressing these concerns is critical to the success of the

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Department of State's programs. These requirements can be more specifically described as follows:

- **Exemptions to Vetting**

RAM should include a formal system for exempting vetting under special circumstances, namely humanitarian emergencies, situations in which vetting could cause retaliation against democracy and human rights groups and where compliance with RAM would violate foreign data protection and privacy laws. U.S. citizens and legal residents as well as populations receiving assistance should also be exempt from vetting.

Exemptions during humanitarian crises: We reiterate our support for vetting exemptions during humanitarian crises. Report language endorsed by P.L. 113-235 in Senate Report 113-195 calls for *"waiving the vetting requirements to prevent delay in responding to humanitarian crises in failing or failed countries."* To ensure that lifesaving assistance safely and immediately reaches people in need, humanitarian organizations should be exempt from vetting requirements in all five pilot countries and Afghanistan. During crises, vetting will threaten the safety of aid workers and delay the delivery of assistance. Core humanitarian principles of neutrality, impartiality, and independence require organizations to act independently from the government donors' political and military objectives.¹ Current vetting systems may lead local populations to view the organizations as intelligence gatherers, threatening the safety of humanitarian personnel as well as impeding the organizations from reaching populations in need. Moreover, vetting can prevent U.S. NGOs, in partnership with local organizations, from rapidly hiring staff and building capacity to address immediate needs during humanitarian emergencies.

To address the concerns stated above, a formal waiver system is required in all five pilot countries. If RAM is implemented in Afghanistan-outside of the authorized pilot-the system in Afghanistan should also be subject to providing waivers. Waiving vetting on an *ad hoc* basis will not be sufficient. NGOs may face long delays in negotiating waivers and the waivers may not be granted until and unless the situation becomes extremely dire-effectively negating the possibility for advance preparation for anticipated crises. A formal waiver system that provides clear deadlines for NGOs to request a review and the Department of State to provide a response will allow for aid organizations to reach affected populations in a rapid and efficient manner.

¹ <http://www.ifrc.org/en/publications-and-reports/code-of-conduct/>

The shortcomings of an *ad hoc* approach were made clear in Somalia in 2011, when the U.S. government's decision to require partner vetting led to major delays in the release of U.S. humanitarian funds during the critical period immediately preceding the famine. While the U.S. ultimately reversed its position on the vetting requirement after NGOs argued that vetting would seriously compromise their security, the process of negotiating this issue cost precious months when humanitarian efforts and related preparation could otherwise have been underway.

We therefore firmly believe that *ad hoc* vetting exemptions will delay and hinder humanitarian efforts in the midst of a crisis.

Exemptions for democracy, human rights, and governance groups: To ensure safety of local partners and U.S. NGO personnel, democracy, human rights, and governance groups should also be exempt from vetting requirements in all five pilot countries and Afghanistan. In certain countries, governments that suspect a link between aid organizations and foreign intelligence may vilify and label U.S. NGOs as intelligence agents- jeopardizing the safety and security of NGO staff and any affiliated partners.² Consequently, local activists promoting democratic values may fear partnering with NGOs that they perceive as affiliated with intelligence.

In several countries, the NGO community is currently experiencing a backlash to democracy programs, which range from physical intimidation and harassment of human rights defenders to the enactment of laws prohibiting work with political parties or prohibiting local civil partner organizations from accepting financial resources from foreign NGOs.³ For example, in Russia, activists take substantial risks by just associating with foreign partners as the Russian government seeks to alienate them from a broader public base of support. RAM would exacerbate this already precarious situation by making recipients appear to be foreign intelligence gatherers. This would impede democracy promotion NGOs from fulfilling their mandates and U.S. foreign assistance objectives. Restrictions on civic participation may be most tightened in places where a strong civil society is most needed.

² "Despite an internationally supported campaign to halt polio in Pakistan, infection rates have soared across the country in the past year, coinciding with a wave of militant attacks against the poorly protected workers at the heart of the effort. Some militants accuse polio workers of using vaccination campaigns as a cover to spy on behalf of the United States — a claim that has been fueled by the revelation that the C.I.A. used a vaccination drive as cover for the effort to find Osama bin Laden in Abbottabad in early 2011." http://www.nytimes.com/2013/02/01/world/asia/two-more-pakistani-polio-workers-killed.html?_r=0

³ It is significant to note that 2013 set a new record for violence against aid workers with 251 attacks killing 155 workers, seriously wounding 171, and kidnapping 134. This represents a 66 percent increase since 2012.
<https://aidworkersecurity.org/sites/default/files/Aid%20Worker%20Security%20Report%202014.pdf>

Data protection and privacy laws: Vetting should also be waived under circumstances where compliance would conflict with a nation's privacy and data protection laws, thereby causing an NGO, subrecipient or vendor to be subject to financial sanctions or even possibly criminal fines. The legal implications for forcing U.S. NGOs to contravene foreign laws are grave and a system for waiving vetting in these cases is critical.

Exemptions for beneficiaries, U.S. citizens and permanent legal residents: To comply with the Privacy Act of 1974, the proposed rule should clearly state that U.S. citizens and legal residents are exempt from vetting. Additionally, it is important to clarify that those receiving assistance would not themselves be subject to vetting. Any conditioning of the receipt of aid by people in need could mean that significant populations may refuse such aid or would be subject to delays, and would likely generate significant objections from local governments, who may view such vetting as impinging on local political processes and sovereignty.

While we request to waive vetting under the circumstances listed above, we do not request authorization to provide aid directly or indirectly to any prohibited entity. Our organizations will continue to conduct due diligence to avoid providing support to any prohibited entity. Due diligence efforts generally include screening staff, subrecipients, partners and others against various prohibited party lists such as those maintained by the Department of Treasury's Office of Foreign Assets Control (OFAC) and the UN, among others both domestic and international; completing reference checks of individuals and partner agencies; conducting program and site visits and conducting interviews.

We are requesting that the Department of State recognize in its regulations that under certain circumstances the costs of vetting, which can include prolonged delays in the delivery of assistance and pose significant threats to the lives of aid workers, partners and overall U.S. foreign assistance objectives, outweigh the potential benefits of vetting, beyond the due diligence already practiced by NGOs.

- ***Direct Vetting Option***

For organizations that do not qualify for exemptions, the role of prime grantees should be limited to notifying local partners that they would need to submit their own information to the Department of State vetting official, and directing them to the appropriate portal or website for information on such vetting. As endorsed by P.L. 113-235 in House Report 113-499, we expect the Department of State to *"standardize and streamline vetting processes and under what circumstances direct vetting should be used."*

Provide a clear direct vetting option: As previously stated, U.S. NGOs are operating in some of the most insecure and inherently dangerous environments in the world. These challenges are largely mitigated through a community acceptance model that requires the trust of the communities in which they work. Where there is armed conflict, it is not uncommon for local partners to protect NGO staff from harm. The fundamental principles of neutrality, independence, and impartiality are compromised should NGOs have to take part in collecting personal information or conveying vetting determinations by the Department of State to subrecipients or vendors. If NGOs are perceived as an intelligence arm of the U.S. government, the community acceptance model may be undermined-jeopardizing the safety of NGO workers, closing off access to people in need and, ultimately, undercutting the Department of State's program objectives.

Under a direct vetting option, international NGOs would submit and verify data on their own staff and they would have the option to decline to collect and verify such data for their subrecipients and vendors due to the associated risk involved. In these situations, the Department of State should interface directly with each subrecipient and vendor subject to vetting to collect and verify the data on key employees. The option for prime grantees to defer to the U.S. government to directly gather personal information from partners should be clearly provided in the Request for Proposals and award letters. This option should be provided in all five pilot countries. If RAM is implemented in Afghanistan-outside of the authorized pilot- a direct vetting option should also be provided in Afghanistan. While the direct vetting option is not ideal, this method distances the U.S.-based NGOs from the U.S. government, minimizing the perception that they are an arm of U.S. intelligence.

- ***Pilot's scope and evaluation***

The proposed rule should explicitly limit RAM to the five pilot countries as directed by Congress. Prior to deciding whether the vetting system is eligible for global expansion, the agency should put forth the criteria and timeline to evaluate the effectiveness of the system.

Vetting should be limited to the five pilot countries: Congress did not authorize the Department of State to implement RAM in Afghanistan. While the proposed rule states that *"this program will continue as a pilot program as directed by Congress in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015,"* it should be revised so that it explicitly limits RAM to the five pilot countries-Guatemala, Kenya, the Philippines, and Ukraine as authorized by Congress.

Clarify that vetting is required when requested: The proposed rule indicates that the obligation to provide personal information to the U.S. government database is

“voluntary.” However, it also indicates that vetting will be applied to solicitation on a case-by-case basis determined by the outcome of a risk based assessment. It is our understanding that, based on the risk profile of the program, partners who refuse to comply will not be eligible for grants and contracts funding. The proposed rule’s supplementary information should clearly state that submitting personal information is required for partners in order to be eligible for grants and contracts.

Department of State should put forth specific evaluation criteria and timeline: The rule states that the Department of State intends to *“evaluate whether the proposed information collection is necessary for the proper functions of the Department.”* Despite this stated goal, the current rule does not put forth evaluation criteria and timeline for the pilot. The 2015 Appropriations Act explicitly states that the *“Secretary of State and the USAID Administrator shall jointly submit a report to the Committees on Appropriations, not later than 30 days after completion of the pilot program”* and provide an *“estimated timeline and criteria for evaluation the PVS pilot program for possible expansion.”* Given our serious concerns about the impact of any vetting program on rapidly and safely providing assistance to communities in need, we ask that the regulations include a timeline and detailed description of the information that the Department of State intends to collect and weigh to decide the future application of vetting.

The evaluation criteria should include: (1) an assessment of how nongovernmental stakeholders were impacted by the pilot program, including the extent to which they were negatively affected, (2) information on the number of partners and beneficiaries who refused to work with the Department of State or expressed security concerns due to the implementation of RAM, (3) threats to nongovernmental staff, partner organizations and beneficiaries due to the pilot program, as well as comprehensive assessments about the administrative burdens of such systems and (4) a summary of any legal risks NGOs faced due to compliance with the pilot program. If the Department of State implements RAM in Afghanistan- outside of the authorized pilot- the Department should set forth the same evaluation criteria and timeline for Afghanistan.

- ***Risk-based assessments***

All risk-based assessments must take into account and prioritize the risks to NGOs’ ability to successfully implement Department of State programs.

Risk-based assessments should prioritize the impacts on NGOs and local partners:

The methodology for collecting information as outlined in the proposed rule is to *“mitigate the risk that such funds might benefit entities or individuals who present a*



national security risk.” Along with national security threats, risk-based assessments should also prioritize and consider risks to NGOs’ reputation as neutral, impartial and independent organizations, the safety of NGO staff and our ability to work with local partners-against the risks associated with forgoing additional due diligence, above and beyond existing U.S. government due diligence efforts. As previously mentioned, the ability for humanitarian and democracy, human rights, and governance groups to safely and successfully operate in challenging environments can be negatively impacted by additional vetting requirements.

Additionally, the results of any risk-based assessments and the application of vetting should be made known as far in advance as possible. This should include consideration of broad waivers along with pre-solicitation and more broadly at the mission level if assessment results conclude that RAM does not apply to all funding in a certain location, and that the Department of State will thus rely on NGOs’ existing due diligence practices.

We sincerely appreciate the opportunity to comment on the Department of State’s Risk Management and Analysis vetting system proposed rule. We strongly believe that any pilot partner vetting system must be designed and implemented-and ultimately assessed-on the basis of its impact on the Department of State programs, and on the basis of its impact on NGOs and local organizations and other stakeholders, as implementing agents of Department of State programs. The design and implementation of such a program must therefore give priority to the ability of NGOs to safely and successfully implement Department of State programs by maintaining NGOs neutrality, impartiality and independence, to ensure the safety of NGO staff, and to develop local partnerships and build local capacity. Finally, we stress the importance of assessing RAM’s added value against existing government and NGO due diligence efforts.

Thank you for the opportunity to publicly voice our comments with respect to the proposed rule.

Best regards,

A handwritten signature in black ink that reads "Lindsay Coates".

Lindsay Coates
Acting President & CEO, InterAction