

April 12, 2017

CBP PRA Officer  
U.S. Customs and Border Protection  
Office of Trade, Regulations and Rulings  
Economic Impact Analysis Branch  
90 K St NE, 10<sup>th</sup> Floor  
Washington, DC 20229-1177

**Re: CBP Information Collection Activities: Electronic Visa Update System  
OMB Control Number 1651-0139**

To Whom It May Concern:

The American Chamber of Commerce in the People's Republic of China (AmCham China) submits these comments in response to the U.S. Customs and Border Protection (CBP) 60-day notice and request for comments regarding the proposal to add social media-related questions to Electronic Visa Update System (EVUS).<sup>1</sup>

AmCham China is a non-profit, non-governmental organization whose membership comprises more than 3,300 individuals from 900 companies operating across China. The chamber's nationwide mission is to help American companies succeed in China through advocacy, information, networking, and business support services. AmCham China is the only officially recognized chamber of commerce representing American business in mainland China. With offices in Beijing, Tianjin, Dalian, Shenyang and Wuhan, AmCham China has more than 50 working groups, and holds more than 250 events each year.

### **Description of the CBP Information Collection Activity**

EVUS is an online platform through which certain foreign nationals must provide visa information updates to CBP in advance of their travel to the United States.<sup>2</sup> Currently, EVUS applies only to persons seeking admission to the United States on the basis of a 10-year B-1 (visitor for business), B-2 (visitor for pleasure, or combination B-1/B-2 visa in a People's Republic of China passport.<sup>3</sup>

CBP now proposes to:

add the following optional question to EVUS: "Please enter information associated with your online presence-Provider/Platform Social media identifier." A social media identifier is any name, or "handle," used by the individual on one or more platforms. The optional social media question on the EVUS enrollment will include a drop-down menu of options for selection.<sup>4</sup> This data will be used for vetting purposes, as needed,

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<sup>1</sup> 82 Fed. Reg. 11237 (Feb. 21, 2017).

<sup>2</sup> 8 C.F.R. §§ 221—224.

<sup>3</sup> CBP, Notice: Electronic Visa Update System (EVUS) Requirements: Identification of the People's Republic of China (PRC) as an EVUS Country and Designation of Maximum Validity B-1, B-2, and B-1/B-2 Visas as Designated Visa Categories, 81 Fed. Reg. 72600 (Oct. 20, 2016).

<sup>4</sup> Presumably the EVUS question drop-down will include platforms more commonly used in China, such as WeChat (微信) and Weibo (微博).

**The American Chamber of Commerce in the People's Republic of China**

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providing highly trained CBP officers with timely visibility into publicly available information on the platforms associated with the social media identifier(s) voluntarily provided by the applicant, along with other information and tools CBP officers regularly use in the performance of their duties. The officer will review said platforms in a manner consistent with the privacy settings the applicant has chosen to adopt for those platforms. It will also help distinguish between individuals with similar characteristics, such as similar names, and provide an additional means to contact an applicant if needed. Respondents who choose not to answer this question can still submit to EVUS enrollment without a negative interpretation or inference. The question will be clearly marked as optional.

### **CBP Seeks More Than Publicly Available Information**

The U.S. Department of Homeland Security (DHS) uses social media for over 30 operational and investigative purposes. Beginning in 2014, DHS has consulted social media for purposes of adjudicating applications for certain immigration benefits.<sup>5</sup> In the past, DHS has emphasized that “our use of social media information is limited to publicly available information.”<sup>6</sup>

The first time that the DHS began requesting social media information as part of an application for benefits or travel to the United States was in December 2016, when CBP began asking foreign nationals filling the Electronic System for Travel Authorization (ESTA) form a question similar to what is now being proposed by EVUS. Visitors for business or pleasure from more than 30 European and other developed countries seeking admission to the United States through the Visa Waiver Program use the ESTA form.<sup>7</sup>

Our comments today demonstrate concern that CBP’s social media questions in ESTA and EVUS go beyond the use of publicly available information. CBP is requesting social media information in order to connect publicly available social media information with personally identifiable information, such as names and passport numbers.

### **Providing Social Media Identifiers Is Not Truly Optional**

The CBP notice states that EVUS’ social media question will be labeled as “optional.” This is vague and misleading for several reasons.

First, the CBP notice does not mention that a person may be denied admission to the country based solely on information CBP finds in their social media account.

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<sup>5</sup> Statement of Francis X. Taylor, DHS Under Secretary for Intelligence and Analysis, Before the U.S. House of Representatives Committee on Homeland Security Regarding “Shutting Down Terrorist Pathways into America” (Sept. 14, 2016), <https://www.uscis.gov/tools/resources-congress/statement-record-us-house-representatives-committee-homeland-security-regarding-shutting-down-terrorist-pathways-america-september-14-2016>.

<sup>6</sup> Statement of Francis X. Taylor, DHS Under Secretary for Intelligence and Analysis, Before the U.S. House of Representatives Committee on Homeland Security Regarding “Shutting Down Terrorist Pathways into America” (Sept. 14, 2016), <https://www.uscis.gov/tools/resources-congress/statement-record-us-house-representatives-committee-homeland-security-regarding-shutting-down-terrorist-pathways-america-september-14-2016>.

<sup>7</sup> CBP, Privacy Impact Assessment Update for the Electronic System for Travel Authorization (ESTA) (Sept. 1, 2016), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-esta-september2016.pdf>.

Second, while foreign visitors may refuse to answer EVUS' social media question, if they refuse to answer the same question posed by an officer at the port of entry, they may be denied admission. As background, DHS takes the position that all electronic devices crossing U.S. borders are subject to search. This is regardless of whether an officer has any individualized suspicion.<sup>8</sup> A person's claim that information on a device is personal or private does not preclude the search.<sup>9</sup> CBP may detain an electronic device or copy encrypted data for later search without notifying the person.<sup>10</sup> CBP may ask a person for a device password, or may ask for a person's social media username and password. Failure to comply with such request is a basis for CBP to deny a foreign visitor's admission to the United States.

Third, the EVUS question does not explain the scope of how CBP will use a respondent's social media information. A person's social media activity reveals information about not only that person but also people in their social networks, including family members, friends, and "followers." CBP could subject those persons to invasive scrutiny and exposure without their consent. CBP could even cast suspicion on a traveler based on messages in their social media account left by third parties—even complete strangers—without the traveler's knowledge or consent. CBP rules place no limit on the period of time that the agency could store social media identifiers and subject their posts to scrutiny.<sup>11</sup>

### **Negative Impact on U.S. Businesses**

CBP's proposed EVUS social media question is likely to have a negative impact on U.S. businesses, including AmCham China member companies.

For U.S. businesses in the travel and tourism industries, Chinese travelers represent a critically important market. In 2015, Chinese travelers spent a record \$30.1 billion experiencing the United States, positioning China as the United States' top spending market abroad in terms of travel and tourism exports.<sup>12</sup> To the extent that many Chinese perceive CBP's proposed social media questions as an invasion of personal privacy, that will be an incentive not to travel to the United States. Travel and tourism from China will be negatively impacted.

AmCham China member companies in other industries will also be negatively impacted to the extent that the CBP's proposed social media questions make it more difficult for such companies to persuade employees, partners, and customers to undertake business-related travel to the United States.

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<sup>8</sup> CBP, Border Search of Electronic Devices Containing Information, CBP Directive No. 3340-049 ¶ 5.3.2.2 (Aug. 20, 2009).

<sup>9</sup> U.S. Immigration and Customs Enforcement, ICE Policy System: Border Searches of Electronic Devices ¶ 8.6 (Aug. 18, 2012), [https://www.dhs.gov/sites/default/files/publications/privacy\\_pia\\_cbp\\_laptop.pdf](https://www.dhs.gov/sites/default/files/publications/privacy_pia_cbp_laptop.pdf).

<sup>10</sup> DHS, Privacy Impact Assessment for the Border Search of Electronic Devices 8 (Aug. 25, 2009), [https://www.dhs.gov/sites/default/files/publications/privacy\\_pia\\_cbp\\_laptop.pdf](https://www.dhs.gov/sites/default/files/publications/privacy_pia_cbp_laptop.pdf).

<sup>11</sup> Further, U.S. Secretary of Homeland Security John Kelly testified to Congress that the agency seeks to make disclosure of passwords for "websites" that foreign nationals visit a routine condition of admission to the country: "If they come in, we want to say, what websites do they visit, and give us your passwords. So, we can see what they do on the internet.... If they really want to come to America, they will cooperate. If not, next in line." If CBP in the future also collects foreign nationals' passwords, CBP could also access private messages and even draft posts—a record of a person's thoughts never shared with anyone.

Testimony before the House Homeland Security Committee (Feb. 7, 2017), <https://www.c-span.org/video/?423321-1/homeland-security-secretary-john-kelly-testifies-us-border-security&start=10725>.

<sup>12</sup> U.S. International Trade Administration, U.S.-China Tourism Year 2016 (Dec. 1, 2016), <https://blog.trade.gov/2016/12/01/u-s-china-tourism-year-2016/>.

## **Other Countries Will Demand Reciprocity, Leading to Violations of Americans' Civil Liberties Overseas**

U.S. requests for social media identifiers will almost certainly lead to similar requests from other countries. "So many countries around the world grant visas or visa waiver on a reciprocity basis, if the U.S. starts demanding greater information from different countries or different groups of travelers, we should not be surprised at all if other governments do the same thing," according to Emma Llanso of the Center for Democracy and Technology.<sup>13</sup>

Many Americans, including employees of AmCham China member companies, would perceive requests from other countries' immigration authorities for social media identifiers (and perhaps passwords) as an invasion of individual privacy and a chill on freedom of expression.

CBP's social media questions undercut the U.S. State Department's long-term efforts to champion global internet freedom, defined as freedom of expression and the free flow of information on the internet.<sup>14</sup> Other countries may use CBP's policy as justification for requiring disclosure of social media usernames and passwords by U.S. citizens and their own citizens in a wide range of contexts.

## **Conclusion**

As mentioned above, DHS routinely uses social media for operational and investigative purposes, including to adjudicate applications to enter the United States or be granted other immigration benefits. In the past, DHS has emphasized that "our use of social media information is limited to publicly available information."<sup>15</sup> Our comments today demonstrate concern that CBP's social media question in ESTA and EVUS goes beyond the use of publicly available information by connecting publicly available social media information with personally identifiable information, such as names and passport numbers. This broader intrusion is not truly optional, will have a negative impact on U.S. businesses, and will lead to violation of Americans' civil liberties overseas when other countries enact reciprocal policies.

Thank you for providing the opportunity to comment on this CBP Information Collection Activity. We look forward to a continuing dialogue on this and related matters.

Sincerely,

The American Chamber of Commerce in the People's Republic of China

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<sup>13</sup> Josh Gerstein, *Trump Proposes Including Chinese Visitors in Social Media Checks*, Politico (Feb. 17, 2017), <http://www.politico.com/blogs/under-the-radar/2017/02/trump-chinese-visitors-social-media-check-235146>.

<sup>14</sup> E.g., U.S. Department of State, Global Internet Freedom Taskforce, <https://2001-2009.state.gov/g/drl/ibr/c26696.htm>.

<sup>15</sup> Statement of Francis X. Taylor, DHS Under Secretary for Intelligence and Analysis, Before the U.S. House of Representatives Committee on Homeland Security Regarding "Shutting Down Terrorist Pathways into America" (Sept. 14, 2016), <https://www.uscis.gov/tools/resources-congress/statement-record-us-house-representatives-committee-homeland-security-regarding-shutting-down-terrorist-pathways-america-september-14-2016>.