

16 February 2012



International Center for Not-for-Profit Law

1126 16th Street, NW, Suite 400
Washington, DC 20036
+1 (202) 452-8600
+1 (202) 452-8555 (fax)
E-mail: sklingel@icnl.org
www.icnl.org

Re: Notice of Proposed Information Collection: DS-4184, *Risk Analysis and Management (RAM)*

To: Desk Officer for DOS

I am writing on behalf of the International Center for Not-for-Profit Law (ICNL) to comment on the proposed information collection.

The International Center for Not-for-Profit Law (ICNL) is an international organization that provides technical assistance, research, and education to support the development of an appropriate legal framework for non-governmental civil society organizations (CSOs) and the Freedom of Association in countries around the world. ICNL has worked on CSO law reform projects in over 100 countries in the Middle East, Africa, Asia, Latin America, Europe, and elsewhere. Over the years, ICNL has worked closely with partners to ensure that CSO legislation meets the needs of both the Government and the nonprofit sector. Our work is supported by The US Department of State, USAID, the European Union, the World Bank, New Zealand AID, UNDP, private foundations, and scores of in-country colleagues.

While we naturally share the stated goal of employing reasonable means to protect USAID and State Department (DOS) resources from possible diversion to terrorist organizations, we strongly object to the use of the Partner Vetting System (PVS) as either an appropriate or effective means of achieving this aim. As we shall briefly point out in our response to the specific questions DOS has raised in its notice, the stated problem (diversion of USG funding to terrorists) has not been demonstrated to be a realistic threat. Certainly, as presented, it is hardly proportionate to the cost of PVS in terms of money and damage to the effectiveness of USG-supported programs, especially in volatile regions so critical to US development and democratization goals, as well as to national security. Moreover, the proposed PVS plan will itself divert scarce resources to its implementation. It will potentially cause an irreparable breach of trust and confidence on the part of local partners.

In summary, we view the proposed PVS plan as a counter-productive impediment to the ability of many independent US organizations to carry out their own missions, which are carefully conceived and fashioned to assist development of stable and participatory local economic, political, and social environments in targeted emerging nations.

1. Evaluate whether the proposed information collection is necessary for the proper performance of PVS

Without significant design changes, the objections previously filed by nonprofits (including ICNL) to PVS remain valid. Those serious objections appear to have been largely disregarded by the authors of this proposal.

As others have stated, virtually no evidence has been put forward to support a claim that USG funds have in fact been diverted to terrorist organizations, directly or indirectly, through civil society organizations (CSOs). As noted by the USAID Inspector General after a review of programs in West Bank/Gaza previous to the earlier PVS iteration, “OIG oversight activities during this period [2006 and 2007] *did not identify any instances* where terrorist organizations received USAID funds.” (Emphasis supplied.) We have been informed of no other instances have been identified before or since, there or anywhere else. No *factual* justification for this costly process has been provided.

2. Evaluate the accuracy of State’s estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

Despite promises made by DOS and USAID to provide information regarding “methodology and assumptions” used in the pilot program or intended for subsequent iterations, little if any such information as been made available. It is impossible to furnish a useful evaluation of something we have not seen. Without transparency on the part of the DOS and USAID on what approach they plan to take and what assumptions they have employed in determining the methodology, commenters must address what is essentially an insubstantial concept. We urge DOS and USAID to provide that basic information in order that we and other nonprofits might comment meaningfully on the underlying operational basis of the PVS program, both as a pilot and as projected.

3. Enhance the quality, utility, and clarity of the information being collected.

An extremely thorough partner vetting system, employed by grant applicants and implementers, is already in place, using available government and commercial lists. Moreover, organizations can and do employ their own often well-developed contacts and connections in countries and communities to evaluate not only names that might arise through the present vetting process, but other persons as well. It is clearly in the best interests of CSOs to seek to ensure that they and their partners, as well as their programs, are not endangered through engagement with, let alone funding of, terrorist groups. The purpose of PVS appears, in fact, to employ US nonprofits as quasi-intelligence sources to validate USG intelligence-derived lists and databases. This is on its face an inappropriate role for nonprofits which are working abroad to enhance the political, economic, and social environment and strengthen the rule of law in countries emerging from volatile and even hostile circumstances. Moreover, the need for such supplemental validation calls into question the accuracy and even validity of the USG intelligence product. And, it might be asked, if there are people on the lists who concern the USG, why not simply tell grantees who they are, so that they will be able to avoid those dangerous individuals, and proceed with their own important work?

4. Ways to minimize the reporting burden on those who are required to respond.

We have raised the question of the inappropriate function PVS would demand of US nonprofits by requiring them to serve as part of the intelligence arm of the USG. Perhaps the most significant reporting burden is this role itself, potentially placing their personnel and the personnel of local partners in harm’s way. If implementers of assistance programs are perceived as servants of the USG intelligence apparatus by beneficiaries of those programs and implementing partners, as well as enemies, people will be

endangered and programs themselves will come into disrepute and rendered ineffective. This result represents a very real and present burden on USG-funded assistance programs.

Moreover, even the “simple” compilation of the data required on the proposed Form 4184 will be time-consuming, diverting precious resources otherwise used to implement programs deemed significant to USG interests. Much of the information required is difficult to find, let alone verify. And it is this last requirement that renders the form legally deficient. It requires the grantee representative to *certify* that he/she has “taken reasonable steps (in accordance with sound business practices) to verify the information contained in (the) form...” The standard of a “reasonable step,” particularly with respect to obtaining personal information from often unwilling sources in difficult and potentially dangerous circumstances, is vague at best, even meaningless. It is at best highly questionable, as a matter of law, for the USG to require an individual representing a grantee to certify to something that he/she cannot practically know to be true.

Conclusion

It remains our view that PVS, as currently structured, is a program without a realistic target that will place unreasonable burdens on those whom it requires to provide the intended information. It will prevent some potential grantees from applying at all, and will hamper or even threaten the efforts of others to design, implement, and deliver programs sought by the USG to serve the best interests of the United States. Furthermore, it is essentially redundant to existing vetting systems already adopted at significant cost by US nonprofits and so far successfully carried out at the behest of the USG. As currently envisioned, PVS will likely cost grantees effective and significant local partners to deliver their programs, because those partners will be extremely resistant to working with an organization that will turn over their private information to a foreign government’s intelligence services.

In short, we believe the PVS to be ill-conceived as presently structured, and we urge that DOS and USAID undertake an open and thorough consultative process with the nonprofit sector to ensure that any further vetting process be effective and accurate and that the nonprofit sector is and is viewed as “nongovernmental” in its essence and in practice.

Respectfully submitted,

Stephan Klingelhofer, *Senior Vice President*