

May 29, 2018

The Hon. Carl C. Risch  
Assistant Secretary  
Bureau of Consular Affairs  
Department of State

## I. INTRODUCTION & SUMMARY

This submission responds to the request for comments on the “60-Day Notice of Proposed Information Collection: Application for Nonimmigrant Visa,” 83 FR 13807,<sup>1</sup> Docket Number DOS-2018-0002.

The tremendous economic value of international travel to the U.S. economy is vital to sustained GDP growth. The economic impact generated from travel and tourism expands beyond airlines, airports, hotels and attractions. Restaurants, national parks, and small businesses also significantly benefit from increased travel. When visiting the U.S., overseas travelers typically spend \$4,360 and stay an average of 18 nights.<sup>2</sup> In 2016, the U.S. welcomed 75.9 million total international travelers, whose spending supported 1.2 million U.S. jobs and generated \$32.4 billion in wages.<sup>3</sup>

Despite international travel’s powerful economic impact, the statistics on international visitation to the United States from 2015-2017 are quite concerning. While international travel is up 8% globally over the past two years, the U.S. share of global long-haul international travel declined by 1.7 percentage points compared to 2015. This has major implications not only for American competitiveness but also the U.S. trade balance. The drop in America’s market share in nine of the top ten source markets for international visitors over the past few years – including Brazil (-25%), France (-21%), and Germany (-15%) – is very worrisome.<sup>4</sup> The decline of the U.S. market share in 2016 and 2017 resulted in a total 7.4 million fewer overseas visitors to the U.S. These visitors could have benefited the U.S. economy by \$32.2 billion in spending and adding 100,000 American jobs if the U.S. had simply kept pace with normal travel growth.<sup>5</sup> It should also be noted that even a small-sounding decline in the U.S. share of travel is a major loss due to the ubiquitous downstream impact on trade and commerce.

Our organizations agree that security is a strong component to international travel; without security, there can be no travel. That said, we must take care not to implement policies that cause

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<sup>1</sup> <https://www.federalregister.gov/documents/2018/03/30/2018-06496/60-day-notice-of-proposed-information-collection-application-for-nonimmigrant-visa>

<sup>2</sup> U.S. Travel Answer Sheet. Updated April 2018.

[https://www.ustravel.org/system/files/media\\_root/document/Research\\_Fact-Sheet\\_US-Travel-Answer-Sheet.pdf](https://www.ustravel.org/system/files/media_root/document/Research_Fact-Sheet_US-Travel-Answer-Sheet.pdf)

<sup>3</sup> Id.

<sup>4</sup> “Press Release: Visit U.S. Coalition Launches Amid Drop in U.S. Share of Global Travel.” Visit U.S. Coalition. January 16, 2018. <https://www.visituscoalition.com/2018/01/16/press-release-visit-u-s-coalition-launches-amid-drop-in-u-s-share-of-global-travel/>

<sup>5</sup> U.S. Travel Association. <https://www.visituscoalition.com/2018/01/16/press-release-visit-u-s-coalition-launches-amid-drop-in-u-s-share-of-global-travel/>

the overwhelming majority of well-meaning travelers to make other choices. It should also be noted that our nation's travel industry is in intense competition with countries around the world, all pursuing a greater share of the \$8.2 trillion global travel market.<sup>6</sup> This highly competitive market is sensitive to new and evolving security protocols. New requirements that make it more challenging to obtain U.S. visas can affect the willingness and interest of international travelers to visit the United States rather than other countries.

We believe safeguarding national security and growing the U.S. economy by encouraging international visitors are compatible, significant objectives. America can be both the most secure and the most visited country in the world. However, we respectfully suggest that this proposed information collection does not strike a proper balance. We are concerned that the proposed expansion of certain “enhanced vetting” questions – from 70,500 “threat profile” applicants to *all* estimated 14 million nonimmigrant visa applicants – will negatively impact inbound international travel and harm America's economic interests without a commensurate improvement to national security. Our concerns are summarized as follows:

- ***Deterring Legitimate Travel to the U.S. Could Significantly Harm our Economic Interests and will Increase our Foreign Trade Deficit:*** Despite worldwide growth of nearly 8 percent in global long-haul travel from 2015 to 2017, the U.S. share of the international travel market declined from 13.6 percent to 11.9 percent during the same period.<sup>7</sup> For instance, if the number of B1/B2 nonimmigrant visas issued dropped by just one percent because people were deterred from applying for a visa and visiting the U.S., this would mean a loss of \$308 million to the U.S. economy.<sup>8</sup> Our organizations fear the expanded information collection on nonimmigrant visa applicants will likely further deter legitimate international travel to the U.S., which will not only drive our global share of this market down, but also increase our trade deficit.
- ***Profound Negative Impact on Small Business:*** The negative impact of fewer international visitors could fall particularly hard on small business, as small business' economic impact is particularly important in the travel industry. Small business growth outpaced the rest of the economy in the period 2010-2017.<sup>9</sup> The largest small-business employer in the United States is the travel-dependent leisure and hospitality sector. Small businesses in leisure and hospitality employ 8.8 million workers, which account for 15.4 percent of private-sector small-business employment. The leisure and hospitality sector is the largest small-business employer in 23 states and second largest in the remaining 27 states.<sup>10</sup>

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<sup>6</sup> “Travel and Tourism Economic Impact 2018 World,” World Travel and Tourism Council. <https://www.wttc.org/-/media/files/reports/economic-impact-research/regions-2018/world2018.pdf>

<sup>7</sup> U.S. Travel Association. <https://www.visituscoalition.com/2018/01/16/press-release-visit-u-s-coalition-launches-amid-drop-in-u-s-share-of-global-travel/>

<sup>8</sup> U.S. Travel Association analysis based on visa figures from U.S. Department of State. <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXVIB.pdf>

<sup>9</sup> From 2010-2017, employment in the travel industry has grown from 7.3 million to 8.8 million. These 1.5 million new jobs represents an increase of 20%. This is nearly double the 12% of employment growth in the rest of the economy. Travel has added jobs faster than the rest of the economy. Source: U.S. Travel Association.

<sup>10</sup> U.S. Small Business Administration, 2013.

- ***The State Department Needs to Ensure that it Complies with the Paperwork Reduction Act:*** Our organizations support the Department’s proposal to ask additional questions regarding whether nonimmigrant visa applicants have ever been deported and whether applicants’ family members have been involved in terrorist activities. These questions are not burdensome for applicants to answer and the responses would certainly provide useful information as consular officers adjudicate visa applications. They should be routine inquiries in the visa application process because they are tailored to identify foreign nationals who may pose risks to the safety of the American people.

However, we are concerned that the current proposal to add several questions to this information collection – particularly those regarding the proposed five years of social media identifiers, email addresses, telephone numbers, and international travel history – did not meet the requirements under the Paperwork Reduction Act (PRA). While other information collection requests over the last year have been narrowly tailored to applicants that fit a “threat profile,” we believe the vast expansion of posing those types of questions to *all* 14 million nonimmigrant visa applicants presents significant PRA difficulties.

Our organizations certainly share the Department’s paramount objective to keep the U.S. safe and secure. However, our organizations are worried that by applying the expanded information collection to an estimated 14 million travelers – from just 70,500 applicants today – the proposal would likely divert attention and limited resources away from people who pose the greatest security threat to the millions of potential travelers who pose little or no risk to the safety of the American people. We welcome opportunities to work with the Department to explore less burdensome information collection processes. Our goals are to simultaneously satisfy the PRA, appropriately identify illegitimate travelers, and achieve the administration’s important economic and job growth goals.

These points are addressed below in due course.

## **II. POTENTIAL NEGATIVE IMPACT THIS INFORMATION COLLECTION WILL HAVE ON THE U.S. ECONOMY AND THE TRADE IMBALANCE**

According to data from the UN World Tourism Organization, the total number of international tourist arrivals around the world reached more than 1.3 billion in 2017. This figure is expected to increase to more than 1.8 billion by 2030.<sup>11</sup> To ensure the U.S. remains competitive in the race to capture the largest share of the booming global travel market, it must promote itself around the world and ensure we offer travelers both a secure and efficient visa experience. In contrast, if the visa process becomes too onerous or intrusive, travelers will simply turn to one of our competitors like France, Germany, Spain, or China.

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<sup>11</sup> United Nations World Tourism Organization. <http://media.unwto.org/press-release/2018-01-15/2017-international-tourism-results-highest-seven-years>; <https://news.un.org/en/story/2017/12/640512-world-could-see-18-billion-tourists-2030-un-agency>.

The U.S. has already been issuing fewer visas. Recent data indicate that the U.S. issued 7.9 percent fewer B1/B2/BCC nonimmigrant visas in FY 2017 than it did in FY 2016.<sup>12</sup> We estimate a loss of \$2.7 billion in travel spending to the U.S. economy as a result of this decline in visa issuance.<sup>13</sup> Furthermore, based on previous surveys of international travelers, we know that an overwhelming majority of these individuals worry about new visa or passport rules when considering a trip to the U.S.<sup>14</sup> Our organizations are concerned the proposed information collection will have a chilling effect on international inbound travel due to confusion, frustration, compliance difficulties, and the negative perception travelers will have about their ability to navigate through a more stringent visa review process. For instance, if the number of B1/B2 nonimmigrant visas issued dropped by just one percent because people were deterred from applying, this would mean a loss of \$308 million to the U.S. economy.<sup>15</sup>

This dip in the U.S. share of the global travel market also hinders the Administration's foreign trade goals. Money spent here by foreign travelers counts as an export for the United States; indeed, international travel is our country's largest export of services accounting for \$245 billion in total travel exports, and the second largest of any economic sector, behind only transportation equipment at \$276 billion and ahead of both the computers and electronics and chemicals sectors.<sup>16</sup> Taking into consideration spending by Americans abroad, the U.S. enjoys an \$84 billion travel trade surplus.<sup>17</sup> Actions that put this surplus at risk would thus have a predictable and negative effect on the U.S. economy and the administration's pro-growth trade agenda.

Further, we are concerned that the Department has not fully considered, as the PRA requires (discussed below), the degree to which the response burden would be borne by low-risk travelers. Individuals posing a genuine threat to the United States are in fact least likely to comply honestly with the proposal. Instead, an approach emphasizing risk-based security, as in the Visa Waiver Program and its increased cooperation with foreign governments on security matters, has proven to be more effective.

### **III. SUBSTANTIAL HARM LIKELY TO BE INFLICTED UPON SMALL BUSINESSES DUE TO REVISED INFORMATION COLLECTION**

Similar considerations arise with respect to the impact of the proposed information collection on small businesses. According to the Small Business Administration, companies that employ under 500 workers account for 99.7 percent of firms with paid employees and provide jobs to 48 percent of the U.S. private-sector workforce. In addition to employing roughly half of America's workers, small businesses are the primary force for job creation. Over the past near

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<sup>12</sup> U.S. Travel Association analysis based on U.S. Department of State statistical data. <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXVIB.pdf>

<sup>13</sup> *Id.*

<sup>14</sup> Survey of 2,011 non-U.S. resident international travelers conducted by RT Strategies on behalf of the Discover America Partnership, 2006.

<sup>15</sup> U.S. Travel Association analysis based on U.S. Department of State statistical data. <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXVIB.pdf>

<sup>16</sup> U.S. Travel Answer Sheet. Updated April 2018. [https://www.ustravel.org/system/files/media\\_root/document/Research\\_Fact-Sheet\\_US-Travel-Answer-Sheet.pdf](https://www.ustravel.org/system/files/media_root/document/Research_Fact-Sheet_US-Travel-Answer-Sheet.pdf)

<sup>17</sup> *Id.*

quarter century (from 1992 to 2016) small businesses generated 62 percent of all new jobs in the United States.<sup>18</sup>

Small business' economic impact is particularly important in the travel industry, which itself has grown faster than the rest of the economy in the period 2010-2017.<sup>19</sup> The largest small-business employer in the United States is the travel-dependent leisure and hospitality sector. Small businesses in leisure and hospitality employ 8.8 million workers, which account for 15.4 percent of private-sector small-business employment. The leisure and hospitality sector is the largest small-business employer in 23 states and second largest in the remaining 27 states.<sup>20</sup>

The small business sector in travel includes many different types of businesses, including small travel agencies, tour operators, and lodging proprietors. Broadly speaking, the tour operator business in the U.S. generally consists of two parts. First, there is the class of larger operators – many of which offer multi-day, multi-destination tours of U.S. landmarks and often cater to foreign visitors by offering tours in visitors' languages. Second, smaller tour operators focus on cities or sites and offer tours or experiences such as whitewater rafting, horseback riding, or other activities to visitors of all types. Among lodging operators, many small hotels and motels are independently operated, often under franchise agreements. Not all, but many of these and similar businesses operate on thin profit margins. Any change in policy that eats into the bottom line of these type of businesses, which this new information collection is likely to do, will be incredibly disruptive. Lower profits could lead to an inability to expand, the need to layoff American workers, or at worst, the need for these businesses to exit the market.

Given the potential impact on tens of thousands of small businesses in various travel-related industries, we recommend that the Department consult with the Office of Advocacy, Small Business Administration, before proceeding with the implementation of the new questions proposed in this information collection.

#### **IV. PAPERWORK REDUCTION ACT ANALYSIS**

##### ***Paperwork Reduction Act Requirements for the Office of Information and Regulatory Affairs***

Beyond the potential impact on the American economy, our organizations respectfully ask the Department to more fully address the potential underlying legal issues should it decide to proceed with the full scope of the information collection as proposed.

The Federal Register notice for the proposed information collection at issue specifically seeks comment on whether the standards of the Paperwork Reduction Act (“PRA”) are satisfied

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<sup>18</sup> U.S. Small Business Administration, Office of Advocacy, ‘What’s New with Small Business,’ August 2017. <https://www.sba.gov/sites/default/files/Whats-New-w-Small-Business-2017.pdf>

<sup>19</sup> From 2010-2017, employment in the travel industry has grown from 7.3 million to 8.8 million. These 1.5 million new jobs represents an increase of 20%. This is nearly double the 12% of employment growth in the rest of the economy. Travel has added jobs faster than the rest of the economy. Source: U.S. Travel Association.

<sup>20</sup> U.S. Small Business Administration, 2013.

here.<sup>21</sup> The PRA, [44 U.S.C. §§ 3501–3521](#) was designed “to reduce paperwork and enhance the economy and efficiency of the Government and the private sector.”

The PRA establishes a high standard of compliance. The Act places both procedural and substantive responsibilities on Office of Management and Budget’s Office of Information and Regulatory Affairs (“OIRA”) and all Federal agencies regarding information collection requests. Congress promulgated the PRA to bring a degree of coherence and prudence to the Government’s quest for data collection from a variety of respondents.<sup>22</sup> The Act sets forth its objectives in direct terms:

The purposes of this chapter are to—

- (1) minimize the paperwork burdens for individuals, small businesses...Federal contractors...and other persons resulting from the collection of information by or for the Federal Government;
- (2) ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government.

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- (4) improve the quality and use of Federal information to strengthen decision-making, accountability and openness in Government and society;...<sup>23</sup>

The PRA established OIRA within OMB, and charged OIRA with the Act’s administration.<sup>24</sup> No data collection instrument (such as the proposed collection at issue here) directed to more than nine respondents can be issued without first receiving OIRA’s approval.<sup>25</sup> Furthermore, in fulfilling its oversight responsibility, OMB issued Circular A-130, which directs federal agencies to establish mechanisms and procedures to meet the PRA’s mandate to reduce collection burdens and ensure the information has significant utility.<sup>26</sup> Under the PRA and the implementing Circular, OIRA has the substantive and *independent* obligation to review the data request proposal. OIRA must review data collection requests in accordance with the PRA’s directives to: (1) “minimize burden and duplication” on those individuals and entities most

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<sup>21</sup> E.g., 83 Federal Register 13,807, col. 1 (March 30, 2018) (“The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations”).

<sup>22</sup> See *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 32 (1990) (the PRA was enacted in response to the federal government’s “insatiable appetite for data.”).

<sup>23</sup> PRA, Subparagraphs (1), (2), and (4), 44 U.S.C. § 3501.

<sup>24</sup> *Livestock Mktg. Ass’n v. USDA*, 132 F. Supp. 2d 817, 830 (D.S.D. 2001) (“Among other things, the Act establishes the Office of Information and Regulatory Affairs within the Office of Management and Budget, with authority to” facilitate and manage the PRA).

<sup>25</sup> *CTIA-The Wireless Ass’n v. FCC*, 530 F.3d 984, 987 (D.D.C. 2008) (“The need for OMB approval of information collections derives from the Paperwork Reduction Act”); *Gossner Foods, Inc. v. EPA*, 918 F. Supp 359, 361-62 (D. Utah 1996) (“The Act institutes a second layer of review by the OMB for new paperwork requirements”) (quoting *Dole*, 494 U.S. at 32-33).

<sup>26</sup> OFFICE OF MGMT. & BUDGET, CIRCULAR A-130 MANAGEMENT OF FEDERAL INFORMATION RESOURCES (2000), available at [https://www.whitehouse.gov/omb/circulars\\_a130\\_a130trans4](https://www.whitehouse.gov/omb/circulars_a130_a130trans4).

adversely affected; (2) “provide useful information” by maximizing the practical utility and public benefit from the information; and (3) “support the proper performance of the agency’s mission.”<sup>27</sup>

In short, OIRA should independently review the Department’s proposed collection requests to ensure that the burdens placed upon responders are minimized, the information collected has the maximum utility, among other PRA requirements.<sup>28</sup>

***Proposed Questions Regarding Prior Deportations and Potential Terrorist Activities of Specified Family Members are Necessary, Warranted, and Meet the Requirements of the Paperwork Reduction Act***

The Department’s proposed collection would ask all nonimmigrant visa applicants about whether they have been “deported or removed from any country,”<sup>29</sup> and whether “specified family members have been involved in terrorist activities.”<sup>30</sup> Our organizations strongly agree that the Department’s forms should ask applicants these questions.

These proposed questions directly relate to potential terrorism or admissibility concerns. Furthermore, the specific language for each of these questions is provided to the public to evaluate, thus providing stakeholders with a functional description of the information to be collected.<sup>31</sup> Visa applicants who respond truthfully and pose no risk to the American people can provide simple “yes” or “no” answers, and would not be unduly burdened in their responses. Applicants who must offer more narrative explanations would provide consular officers with exactly the kind of information that can help identify foreign nationals that fit a “threat profile” and rightfully warrant enhanced vetting protocols.

In short, we believe the proposed questions regarding prior deportations and the terrorist activities of specified family members pose minimum response burdens on applicants and provide the Department with a high-level utility to further our national security interests and deter illegitimate travelers from entering the U.S. In our collective view, the Department has met its obligations under the Paperwork Reduction Act to propose the inclusion of these questions on the Forms DS-156 and DS-160.

***Other Proposed Questions in the Information Collection Lack Clarity and Justification***

Our organizations’ concerns with the proposed revisions to this information collection are focused on the questions that would require all visa applicants to provide various social media identifiers, previously-used telephone numbers, email addresses, and international travel history for the five years preceding the filing of visa application. Stakeholders would benefit from more clarity on the value of such an expansive information collection. The Department should provide

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<sup>27</sup> *Office of Info. and Regulatory Affairs Q&A’s* OFFICE OF MGMT. & BUDGET, [https://obamawhitehouse.archives.gov/omb/OIRA\\_QsandAs/](https://obamawhitehouse.archives.gov/omb/OIRA_QsandAs/) (last visited May 8, 2016).

<sup>28</sup> See *Dole*, 494 U.S. at 32-33 (all federal agency actions that require the collection of paperwork must be reviewed by the OMB in accordance with the PRA’s goals and purposes).

<sup>29</sup> 83 Fed. Reg 13,807, 13,808, col. 1.

<sup>30</sup> *Id.*

<sup>31</sup> See 44 U.S.C. §3506(c)(1)(A)(ii), which states that an agency, in this case the State Department, has the responsibility to include its submission for review of a proposed information collection that it provides a “functional description of the information to be collected.”

additional justification as to why the new questions they seek to include in these visa application forms are necessary for the proper performance of the Department's functions. *See* 44 U.S.C. §3506(c)(3)(A).

Similarly, the proposed information collection does not appear to give guidance to consular officers as to how they should implement the proposal. This contrasts with the direction from the Presidential Memorandum of March 6, 2017, which states that “the executive branch is committed to ensuring that all laws related to entry into the United States are enforced rigorously and *consistently*.”<sup>32</sup> The Department currently does not provide guidance or criteria as to how the information collection would be enforced consistently across 14 million visa applicants. There is also a lack of clarity on how the new data would be used in visa application adjudications. We recommend that the Department develop and clarify how and when consular guidance would be created should it decide to proceed with all elements of the collection as proposed.

Furthermore, the Department's proposal states that applicants will be required "to provide any identifiers" used by applicants for social media platforms listed on the application. First, while we acknowledge that the supporting statement notes that consular officers will not request an applicant's social media passwords, we recommend that such a statement be included in the text of any proposed question regarding an applicant's social media. This would help ensure that visa applicants will understand what is required of them and what is not.<sup>33</sup>

In addition to providing more specificity regarding social media identifiers and passwords, the Department should provide stakeholders with guidance on social media usernames and handles they will be asking for on the form. The Department's proposed question states, in part, that the applicant will “select from the list below each social media platform you have used within the last five years.”<sup>34</sup> Neither the Federal Register notice proposing these new questions, nor the supporting statement associated with this information collection, provide a list of social media platforms for which usernames and handles would be sought in this revised information collection. Stakeholders would have a very difficult time accurately evaluating the “accuracy of...the...cost burden for this proposed collection”<sup>35</sup> without being properly apprised of the specific information being sought by the Department on either Forms DS-156 or DS-160. The PRA requires that federal agencies provide a “functional description of the information to be collected.”<sup>36</sup> Our organizations are concerned that the time burdens and potential for innocent mistakes could be far greater than estimated.

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<sup>32</sup> Memorandum on Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits, Ensuring Enforcement of All Laws for Entry Into the United States, and Increasing Transparency Among Departments and Agencies of the Federal Government and for the American People, March 6, 2017, Section 1; available at <https://www.gpo.gov/fdsys/pkg/DCPD-201700159/html/DCPD-201700159.htm> (emphasis added).

<sup>33</sup> See 44 U.S.C. §3506(c)(3)(D), which requires the language that an agency uses in an information is “written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond.” Providing this clarifying language will ensure applicants understand that they need not provide their social media passwords to the State Department when applying for a visa.

<sup>34</sup> Supporting Statement for NIV Application, Application for Nonimmigrant Visa, OMB Number 1405-0182, DS-160 and DS-156, at p.5, Question #15.

<sup>35</sup> 83 Fed. Reg. 13807

<sup>36</sup> 44 U.S.C. §3506(c)(1)(A)(ii).



The experience of the Department of Homeland Security (DHS) in a recent pilot effort to screen immigration applicants using social media information could prove to be informative to the Department's current effort. According to the Office of the Inspector General for DHS, the pilot programs "lack criteria for measuring performance," and there was no evidence that the program had "well-defined, clear, and measurable objectives."<sup>37</sup> Without fully defined criteria, the DHS pilot program "may provide limited information for planning and implementing an effective, department-wide future social media screening program." DHS's experience should serve as a cautionary example, highlighting the necessity to further examine the value of social media screening and formalize measurement and effectiveness metrics before broadly adopting such a proposal for all nonimmigrant visa applicants.

Our organizations respectfully advise that the Department not proceed with mass collection of information about applicants' social media use and other requested private information without understanding the incremental benefit and determining clear mechanisms to measure effectiveness, and formalized means of using and securing the information. At a minimum, we would like to work with the Department on a compromise proposal.

**1. It is unclear how the proposed questions on social media identifiers will "maximize the utility" of the additional information sought from visa applicants.**

Our organizations have not identified data or analyses to justify the full scope of the information collection at issue. The Department's "Supporting Statement" for the nonimmigrant visa ("NIV") collection simply states that determinations of visa eligibility "would not be possible without collecting this information."<sup>38</sup> Without any additional explanation or empirical evidence provided we have an even greater concern. The Department also concludes: "This information collection is essential for determining whether an applicant is eligible for a nonimmigrant visa." However, the Department has issued approximately nine to ten *million* nonimmigrant visas annually from 2013 to 2017<sup>39</sup> and of course, strives to safeguard the American people with *every* visa adjudication,<sup>40</sup> We respectfully ask for a better understanding about why collecting the new information from *all* 14 million estimated NIV applicants is now "essential" to determine visa eligibility.

Should the Department move forward as proposed, a more thorough explanation is important with regard to the practical utility of information to be gathered from the March 30

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<sup>37</sup> DHS' Pilots for Social Media Screening Need Increased Rigor to Ensure Scalability and Long-term Success (Redacted), February 27, 2017 OIG-17-40, at 9; available at <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-40-Feb17.pdf>

<sup>38</sup> Supporting Statement for NIV Application, Application for Nonimmigrant Visa, OMB Number 1405-0182, DS-160 and DS-156, at p.2 ¶ 2.

<sup>39</sup> U.S. Dep't of State, Bureau of Consular Affairs, *Report of the Visa Office 2017*, "Immigrant and Nonimmigrant Visas Issued at Foreign Service Posts Fiscal Years 2013 – 2017," Table 1, Available at <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-Table1%20.pdf>.

<sup>40</sup> *E.g.*, Carl C. Risch, Ass't Sect'y of State for Consular Affairs, "Every Visa Decision is a National Security Decision," DIPNote, U.S. Dep't of State Official Blog (Jan. 25, 2018) ("This collaboration with our interagency partners has further enhanced the rigorous vetting and screening of all applicants for immigration benefits. For example, in May we began collecting data including social media and additional contact information *from certain visa applicants*") (emphasis supplied), available at <https://blogs.state.gov/stories/2018/01/25/en/every-visa-decision-national-security-decision>.

requests, especially when 70,500 visa applicants presenting a “threat profile” already answer enhanced vetting questions. Indeed, to date, the Administration has opted for a “tailored approach”<sup>41</sup> in scrutinizing NIV applicants. The Administration’s suite of travel-related actions dating back to early 2017 apply enhanced vetting protocols to “*identified] sets* of post applicant populations,”<sup>42</sup> where only a “*certain*”<sup>43</sup> “*subset* of visa applicants worldwide”<sup>44</sup> pose potential risks to the U.S.

We want to note that our organizations **strongly** share the Department’s vital objective to ensure the safety and security of our country. With the aim to optimize our collaboration with the Department to pursue this overriding mission, we ask: Can we help identify a more tailored, but still effective, subset of nonimmigrant visa applicants who should be subject to social media and similar enhanced vetting protocols that is less than the entire pool of 14 million NIV applicants?

Similarly, the Department has not detailed how it proposes to verify respondents’ truthfulness. For example, if a visa applicant simply does not include social media information on the application, how does the Department plan to determine whether that is because the applicant does not use social media or because the applicant is not being fully truthful in the application? At a minimum, we request the Department to enunciate an unclassified policy for how it plans to verify applicants’ truthfulness and the standards it will use to judge non-response.

Our organizations request that the Department help us understand why this information is necessary to ensure “the greatest possible benefit from and maximize the utility of”<sup>45</sup> information sought from the March 30 Requests – and thereby satisfy the PRA.

## **2. The approximated response burden for this revised information collection overestimates the utility provided to the Department and underestimates the time/cost burden to be borne by stakeholders.**

As the Department knows, the PRA’s purpose, to “maximize the utility” of collected information correlates, to the equivalent goal that federal agencies must ensure they “minimize the paperwork burdens for individuals ... and other persons resulting from the collection of information ...”<sup>46</sup> In this regard, OIRA must review the Department’s obligation to minimize the response burden relative to the degree of usefulness of the requested data such that the new information obtained has both practical utility for the Department and is necessary for the proper

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<sup>41</sup> September 24 Proclamation. § 2(h)(ii) and (iii).

<sup>42</sup> “Notice of Information Collection Under OMB Emergency Review: Supplemental Questions for Visa Applicants,” 82 Fed. Reg. 20,956 (May 4, 2017), available at <https://www.federalregister.gov/documents/2017/05/04/2017-08975/notice-of-information-collection-under-omb-emergency-review-supplemental-questions-for-visa>, at 20,957, co. 2

<sup>43</sup> E.g., 30-Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants,” 82 Fed. Reg. 56,099, 56,100 (Nov. 27, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-11-27/pdf/2017-25490.pdf>. U.S. Dep’t of State, Bureau of Consular Affairs, *Report of the Visa Office 2017*, “Immigrant and Nonimmigrant Visas Issued at Foreign Service Posts Fiscal Years 2013 – 2017,” Table 1, available at <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-Table1%20.pdf>.

<sup>44</sup> “60-Day Notice of Proposed Information Collection: Supplemental Questions for Visa Applicants,” 82 Fed. Reg. 36,180 (Aug. 3, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-08-03/pdf/2017-16343.pdf>, at 36, 181 e.g., *supra* note 36.

<sup>45</sup> PRA, 44 U.S.C. § 3501(2).

<sup>46</sup> PRA, 44 U.S.C. § 3501(1) and (2).

performance of agency functions.<sup>47</sup> That is, where the requested information has lower utility, the agency should go to even greater lengths to minimize respondents' collection burdens. It would appear, however, that posing the heightened screening questions to *all* visa applicants hazards minimal utility (as explained above) – and by increasing the respondent pool virtually to its maximum limit, the response burden is stretched to a point where the PRA is fairly called into question.

Related to the issue of utility, it would be helpful if the Department offered a specific, objectively supported explanation to validate its response burden estimates, which is required under the PRA.<sup>48</sup> We are concerned that the simple calculation the Department provides on how much time and cost these burdens could impose upon potential visa applicants contains the implicit assumption that applicants would have no trouble complying with the new proposed social media questions in this information collection. The analysis seems to suggest that visa applicants would not experience any confusion or frustration with these new questions, despite adding an additional 15 minutes to ensure that their visa applications are completed properly.

More important, the Department's analysis assumes, even with the inclusion of new questions on the form, the rate at which individual applicants are approved/denied would not deviate from current rates. It is reasonable to assume that these new requirements would cause some individuals to be denied due to their inability to properly complete the new questions on these forms. It would be helpful to do a more thorough assessment of the time/cost burdens on potential international travelers under this proposal. One way to do this would be by examining its current approval/denial rates for travelers who are currently subject to enhanced vetting measures, such as those individuals who have had to complete a Form DS-5535 *Supplemental Questions for Visa Applicant* to apply for a visa. We hope that, in the event the Department moves forward with this new information collection, the Department conducts a study to provide stakeholders with the objective analysis required under the PRA to justify its burden estimates.<sup>49</sup>

The potential confusion that applicants may experience in filling out these forms with these proposed questions not only extends to the social media questions; it includes the proposed questions regarding telephone number, as well. With regard to the issue of an applicant providing the government with his/her telephone numbers, applicants are already required to provide their current, secondary, and work telephone numbers in the Forms DS-156 and DS-160.<sup>50</sup> There is no additional guidance for stakeholders to identify which telephone number should be included. There are many ways to interpret this proposed question and the Department should provide further specificity regarding the language in the question to properly apprise stakeholders of what exact information is being sought.<sup>51</sup>

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<sup>47</sup> 44 U.S.C. §3506 (c)(3)(A).

<sup>48</sup> See 44 U.S.C. § 3506(c)(1)(A)(iv).

<sup>49</sup> *Id.*

<sup>50</sup> Supporting Statement for NIV Application, Application for Nonimmigrant Visa,” OMB Number 1405-0182, DS-160 and DS-156, at p.6.

<sup>51</sup> 44 U.S.C. §3506(c)(3)(D) requires the State Department to ensure the language used is written using “plain, coherent, and unambiguous terminology and is understandable to those who are to respond.” The language proposed can be interpreted in more than one way; as such, the State Department must add clarifying language to properly inform stakeholders of what information they need to provide on the Forms DS-156 and DS-160.

### 3. Less burdensome collection alternatives should be evaluated.

To pass PRA muster, the agency should offer and OIRA should consider alternatives to propose a collection process with lesser response burdens on applicants. In this regard, our organizations would welcome the opportunity to assess alternatives that fully meet national security goals, while also promoting economic growth. In this manner, we could help focus enhanced vetting questions on respondent pools that can flag *illegitimate* travelers, while also imposing lesser collection burdens on *legitimate* tourists and business travelers we should be welcoming.

More aligned with this refined approach, our organizations suggest that travel security can be optimized by targeting smaller subsets of visa applicants with enhanced vetting questions. For example, some alternatives to the proposed approach that we hope the Department will consider, include:

- As consistent with a Presidential Proclamation of September 24, 2017, asking the enhanced vetting questions to narrowly defined subgroups of *nonimmigrant* visa applicants that present a threat profile and to whom questions regarding social media history, etc., should be posed.<sup>52</sup>
- Asking the enhanced vetting questions to all nonimmigrant visa applicants if they seek U.S. entry from, or have ever visited, state-sponsors of terrorism and other countries of concern.<sup>53</sup>
- Asking NIV applicants for one year of addresses, telephones and travel history – which could prompt supplemental questions for a longer period as flagged by a consular officer.

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<sup>52</sup> President Trump’s September 24, 2017 Proclamation recognized that the scale of threat information gathering, identification, and assessment varies depending on whether the foreign national seeks an *immigrant* – versus a *nonimmigrant* – visa:

(ii) *These restrictions distinguish between the entry of immigrants and nonimmigrants. Persons admitted on immigrant visas become lawful permanent residents of the United States. Such persons may present national security or public-safety concerns that may be distinct from those admitted as nonimmigrants.*

(iii) *I am adopting a more tailored approach with respect to nonimmigrants,* in accordance with the recommendations of the Secretary of Homeland Security.

Presidential Proclamation, “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats” (Sept. 24, 2017), available at:

<https://www.whitehouse.gov/presidential-actions/presidential-proclamation-enhancing-vetting-capabilities-processes-detecting-attempted-entry-united-states-terrorists-public-safety-threats/>

<sup>53</sup> See, e.g., March 6, 2017: Executive Order 13,780, “Protecting the Nation from Foreign Terrorist Entry Into The United States,” available at <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states-2/>; Cable from the Secretary of State Tillerson, “Superseding 17 STATE 24324: Implementing Immediate Heightened Screening and Vetting of Visa Applicants,” 17 STATE 25814 (March 17, 2017), available at [http://live.reuters.com/Event/Live\\_US\\_Politics/791255396](http://live.reuters.com/Event/Live_US_Politics/791255396); and September 24, 2017: Presidential Proclamation, “Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats,” available at <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-enhancing-vetting-capabilities-processes-detecting-attempted-entry-united-states-terrorists-public-safety-threats/>

- Asking social media questions to visa applicants who have visited ISIS-controlled territory, or who may have had ties to ISIS or other terrorist organizations.<sup>54</sup>

Similarly, instead of the proposed information collection, we believe U.S. security would be better advanced by measures that also include investing in secure technology, adding staff at key international locations for visa processing, and adding visa processing facilities in countries where demand is high. Screening systems at ports of entry should be both robust and efficient, while trusted traveler programs such as Global Entry, Nexus and Sentri all encourage and help facilitate legitimate travel while enabling a greater concentration of resources on the small group of potential travelers who might pose a threat to the United States.

We are concerned that the high burden placed on consular officers as a result of this proposed information collection would leave little scope for these and other actions that would both heighten security and facilitate travel. To be clear, we strongly endorse increases in the number of both consular officers to process visa applications and U.S. Customs and Border Protection officers at ports of entry, as well as improving the physical and technical infrastructure each group requires for its critical security tasks.

**We would be pleased to work with the Department to develop an alternative proposal and sincerely hope that one will be considered**

## V. CONCLUSION

The website of the Bureau of Consular Affairs, in the section directed towards prospective foreign visitors, notes that:

If you are coming to the United States as a temporary visitor for employment or education, as the foreign-citizen fiancé(e) or spouse of a U.S. citizen, or a foreign-citizen spouse of a lawful permanent resident (LPR), as provided by U.S. immigration laws, we welcome you to this country.<sup>55</sup>

That simple message – “we welcome you to this country” – lies at the heart of travel promotion and the economic, social, cultural, and diplomatic benefits that travel to the U.S. brings. Our organizations support a secure travel experience and an efficient, well-functioning system for the issuance of visas. With the right policies, we believe the United States can be the most secure and the most visited country in the world. Given the importance of international travel to the U.S. economy coupled with the loss of market share to other nations we compete with and the real challenge this could cause legitimate travelers to the U.S., we urge the Department to withdraw this particular proposal and address the issues raised throughout these comments. At a minimum, we believe that the Department should choose to issue a revised information collection request that properly balances the interests of both safe and secure travel and the nation’s economic interests in welcoming international visitors.

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<sup>54</sup> *Id.*

<sup>55</sup> “Your Rights and Protections,” <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/rights.html>

We look forward to working with the Department to ensure that visa application policies further both U.S. national security and economic interests. Thank you for considering our views.

American Hotel & Lodging Association

American Resort Development Association

American Society of Association Executives

Asian American Hotel Owners Association

Cruise Lines International Association

International Association of Exhibitions and Events

International Franchise Association

Society of Independent Show Organizers

The Real Estate Roundtable

U.S. Chamber of Commerce

U.S. Travel Association