

May 24, 2018

The Honorable Carl C. Risch
Assistant Secretary
Bureau of Consular Affairs
Department of State
2201 C Street, NW
Washington, DC 20520

Submitted via www.regulations.gov

Dear Assistant Secretary Risch,

We, the 56 undersigned organizations that, in turn, represent over 1.5 million members combined, write to express our concerns regarding the **Notice of Proposed Information Collection: Application for Immigrant Visa and Alien Registration** (Form DS-260, OMB Control Number 1405-0185) and the **Notice of Proposed Information Collection: Application for Nonimmigrant Visa** (Form DS-160 and DS-156, OMB Control Number 1405-0182), published in the *Federal Register* on March 30, 2018.

We appreciate and support the need to secure our nation and its citizens from individuals who seek to do the United States and its interests harm; however, while doing so, we must remain open to those pursuing academic study and scientific and engineering research. In fact, our nation's security depends on a visa and immigration system that accomplishes both of these important tasks. Global academic and scientific exchange is now constant and necessary, fueling the innovations essential to strengthening our nation's economy and improving the lives of U.S. citizens.

Policy changes made today will affect our nation's competitiveness for years to come, and should be carefully considered. Requiring every immigrant and nonimmigrant applicant to provide up to five years of social media accounts, telephone numbers, and email addresses, along with travel history, is likely to stifle the flow of future international travel to the United States. As each notice indicates, the additional questions will add significant time to the application and adjudication process, possibly leading to unacceptably long delays. This would be particularly harmful to applicants with strict activity timelines or enrollment deadlines. There is also no clear rationale presented for the proposed change, nor any statement regarding the longer-term use, retention, or privacy protections for the information collected. We urge the Department of State to reconsider this expansion until further consideration is given to the concerns outlined below.

Impact on future academic, scientific exchange and collaboration

If implemented, particularly with insufficient resources, the additional screening requirements will have a negative impact on higher education and scientific collaborations. According to NAFSA: Association of International Educators, the more than one million international students attending U.S. colleges and universities during the 2016-2017 academic year supported 450,000 U.S. jobs and contributed nearly \$37 billion to the U.S. economy. Moreover, according to Chellaraj et al., for every 10% increase in international graduate students, U.S. patent applications increase by 4.5%.¹ International undergraduate and graduate students and scholars contribute to the intellectual richness of our universities, and serve as goodwill ambassadors in their home countries when they return. They also help U.S. students prepare for future careers and better understand our global neighbors.

The potential loss of these students and scholars is not an idle concern. In January this year, the Council on Graduate Schools reported a decline in first time international graduate student enrollment in the United States for fall 2017, the first such decline in a decade.² In FY 2017, DOS issued 16% fewer F-1 international student visas and 9% fewer B-1/B-2 visitor visas.³ International students and researchers have choices, and by adopting burdensome visa application requirements absent a clear, evidence-based rationale, the United States risks sending existing and potential partners and students elsewhere, thereby enriching those countries with their intellectual and economic contributions, resulting in a double loss for the United States. We raised these same concerns last May in a comment letter⁴ regarding Supplemental Form DS-5535, which sought a similar collection of social media information for a much more limited number of applicants.

Scientific exchanges, whether through long- or short-term visits or at professional society meetings, are vitally important to the United States. As we mentioned last year, many project collaboration meetings take place at conferences held in the United States, and not having the top international talent in attendance would be a significant problem. For example, almost every NASA mission has international partners. Scientists must periodically meet in-person, and if bureaucratic hurdles for entry into the United States are too high, they will hold their meetings elsewhere, hurting U.S. economic, technological, and scientific competitiveness. For example,

¹ Chellaraj, G., Maskus, K., & Aaditya, M. (2008). The contribution of international students to U.S. innovation. *Review of International Economics*, 16(3), 444-462.

² International Graduate Applications and Enrollment, Fall 2017, available at http://cgsnet.org/ckfinder/userfiles/files/Intl_Survey_Report_Fall2017.pdf

³ Department of State, "Classes of Nonimmigrant Visas Issued, Fiscal Years 2013-2017), available at <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXVIA.pdf>

⁴ Multi-society letter expressing concerns over supplemental questions for visa applicants, May 18, 2017, available at <https://mcmprodaaas.s3.amazonaws.com/s3fs-public/DS-5535%20Supplemental%20Questions%20for%20Visa%20Applicants%20Emergency%20Submission%20Comment%20051817%20FINAL.pdf>.

in 2017, the United States lost a bid to host the 2023 General Assembly of the International Union of Crystallography in San Diego, California, and delegates specifically cited visa policy concerns as an influencing factor in their decision.

Moreover, many U.S. professional societies have significant numbers of international members, and it is important for those individuals to be able to attend the U.S. societies' meetings. In a 2012 report, PricewaterhouseCoopers reported that nearly 1.8 million meetings (not all scientific) were held in the United States. The attendance of international scientists at U.S. meetings and conferences is important in terms of the intellectual content contributed, the number of collaborations with U.S. counterparts that are created or sustained, and the benefits accrued to the United States economy.

Uncertainty about the information collected

The Department of State (DOS) and the Department of Homeland Security (DHS) are currently providing conflicting information about what is to be collected from immigrant and nonimmigrant applicants. DHS plays a significant role in the determination of U.S. visa policy, and this proposed information collection should not proceed in isolation of that fact. Although DOS's March 30 *Federal Register* notices refer primarily to collecting information on social media accounts, telephone numbers, email addresses, and travel history, a separate document developed by DHS for industry discussions about an "Extreme Vetting Initiative" refers to the review of "publically available information, such as media, blogs, public hearings, conferences, academic website, social media websites such as Twitter, Facebook, and LinkedIn, radio, television, press, geospatial sources, internet sites, and specialized publications."⁵

Likewise, the *Federal Register* notices say that the review will be once per application. DHS Secretary Kristjen Nielsen, however, testified before the Senate Judiciary Committee in January 2018 that "individuals are [to be] continuously vetted, rather than only at the time of their application."⁶ The continuous vetting suggested by DHS would be done from the time of application until the individual leaves the United States.

Approval of DOS's proposed information collection seems premature when it is clear there is no agreement among the relevant agencies on the information to be collected and how or how often it is to be reviewed. This inevitably will lead to inconsistency and confusion both with applicant

⁵ Background (Attachment 2) for "ICE-HSI- Data Analysis Service Amendment," Solicitation Number HSCEMD-17-R-00010, *FedBizOpps*, June 12, 2017. Available at <https://www.fbo.gov/index.php?s=opportunity&mode=form&tab=core&id=434e6e8d59e2322a34b599735df70a2e&cvview=0>.

⁶ Written testimony of DHS Secretary Kirstjen Nielsen for a Senate Committee on the Judiciary hearing titled "Oversight of the United States Department of Homeland Security," January 16, 2018, available at <https://www.dhs.gov/news/2018/01/16/written-testimony-dhs-secretary-kirstjen-nielsen-senate-committee-judiciary-hearing>

reporting and reviewer evaluation. We also are concerned that the lack of a common standard will force DOS ultimately to revise its current proposal to mirror DHS's even broader information collection.

Uncertainty regarding the collection of social media information

The collection of social media information is of particular concern, given the fluid nature of online engagement, the lack of specificity, and the potential impact on applicants for inadvertent failure to disclose information. Many people, including international students, are active on social media and have numerous accounts that frequently change over the years. The notices still do not address the consequences should an applicant inadvertently omit an active account or forget a dormant one. What criteria would be used to distinguish between error and material misrepresentation? Both notices state that "the 'Sign and Submit' statement will provide applicants additional information related to correcting records within Federal Bureau of Investigation databases," but what about correcting records contained in other government security databases? Will any decisions made with respect to social media have a lasting effect on subsequent visa applications? Given the increased volume of applicants affected, precision in this area is essential.

Uncertainty about privacy protection and the purpose of the information collection

We are concerned that the amount of information that could be collected, the lack of knowledge about what will be done with this additional information, and concerns about their privacy may well lead many international scientists, scholars, and students to look to other countries for scientific partnerships or higher education pursuits. Also of concern is the fact that DOS notices do not provide any clear, evidence-based rationale for the expanded information collection.

Vulnerable populations must be assured

Disclosing social media information, along with travel, telephone and email address history, places an added burden on vulnerable individuals, such as those who have fled terrorism and human rights abuses; those who have traveled to areas of concern for the purpose of gathering evidence and reporting what they have witnessed, and/or providing assistance to the local population; and those who are subject to persecution or negative consequences from their government or communities based on their faith, gender, sexual orientation, or other factors. We urge the DOS to reaffirm the importance of non-discrimination in the context of visa processing, and assure vulnerable populations how their information will be used and protected.

Implementation issues, including processing delays

We believe that this expansion could have serious implementation issues resulting in lengthy processing delays and preclude applicants from obtaining entry visas in time for scheduled meetings and academic start dates in the United States. Last year's Supplemental Form DS-5535 notice stated that 65,000 applicants would be affected, with an estimated 60 minutes per review

per applicant. The current notices estimate that 710,000 immigrants and 14 million nonimmigrants will be affected annually, with the estimated time per review increasing to 155 minutes for an immigrant application and 90 minutes for a non-immigrant application. The total estimated time burden would be 1.8 million hours annually for immigrant applications, and 21 million hours annually for non-immigrant applications. These are significant increases in time and volume that directly affect the capacity of offices to conduct reviews in a timely fashion and would very likely result in longer processing delays that ultimately drive potential international researchers and students to other countries who will benefit.

In addition, such actions by the United States may result in reciprocal actions by other countries that require visas. This will make U.S. citizen travel to such countries more difficult.

Visa Lifecycle Vetting Initiative

As noted earlier, DHS plays a significant role in determining U.S. visa policy. Although not explicitly addressed in the notices, we are equally concerned about how these additional vetting questions will contribute to DHS' Visa Lifecycle Vetting Initiative (VLVI), previously named the Extreme Vetting Initiative. The initiative, mentioned earlier, would require continuous monitoring of visa holders and screen individuals based on whether they will be "positively contributing member[s] of society" and "contribute to the national interest."⁷ We believe these criteria are vague and ill-defined.

The VLVI also has been strongly opposed by a coalition of more than 50 civil rights, civil liberties, and government accountability organizations as well as a group of 56 leading technology experts.⁸ The latter stated, "Algorithms designed to predict these undefined qualities could be used to arbitrarily flag groups of immigrants under a veneer of objectivity. Inevitably, because these characteristics are difficult (if not impossible) to define and measure, any algorithm will depend on 'proxies' that are more easily observed and may bear little or no relationship to the characteristics of interest... Data mining is a powerful tool. Appropriately harnessed, it can do great good for American industry, medicine and society... but the approach set forth by ICE is neither appropriate nor feasible." The authors also warn of the very real likelihood of a large number of false positives that would result from such an untested system.

⁷ Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States, January 27, 2017, available at <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states/>

⁸ Brennan Center for Justice, "Technology Experts Letter to DHS Opposing the Extreme Vetting Initiative," November 16, 2017, available at <https://www.brennancenter.org/sites/default/files/Technology%20Experts%20Letter%20to%20DHS%20Opposing%20the%20Extreme%20Vetting%20Initiative%20-%2011.15.17.pdf>.

Brennan Center for Justice, "Coalition Letter to DHS Opposing the Extreme Vetting Initiative," November 16, 2017, available at <https://www.brennancenter.org/sites/default/files/Coalition%20Letter%20to%20DHS%20Opposing%20the%20Extreme%20Vetting%20Initiative%20-%2011.15.17.pdf>.

This is especially true given language and cultural differences. Such ongoing monitoring of a wide number of non-U.S. citizens and a range of websites and social media accounts, inevitably data and information could be collected on U.S. citizens—including academics and scientists—chilling free speech, expression, and association.

Positive messages and privacy protections needed

Again, policy changes made today will affect our nation's competitiveness for years to come, and should be carefully considered. International scientists have made valuable contributions to the U.S. research enterprise and our nation has benefited from attracting the best and brightest international scholars. Russian-born Sergey Brin, while a graduate student at Stanford, received a NSF Graduate Student Fellowship, and with classmate Larry Page, began work that later led to the two co-founding Google.⁹ Similarly, since 2000, 39% of Nobel Prize winners from the United States have been immigrants.¹⁰ We are very concerned that if the additional questions are implemented, as proposed, international undergraduate and graduate students, scholars, and scientific collaborators may be further discouraged from coming to the United States. Until a more appropriate or feasible way of conducting additional screening on the more than 14 million nonimmigrants and 710,000 immigrants to our country can be identified and tested, we believe the proposed expansion should be put on hold.

If implemented, however, the U.S. Government needs to express positively that all legitimate visitors, students, scholars and scientists are still welcomed and encouraged. In addition, privacy protections need to be addressed and should be published in a future notice.

We are all committed to the safety and security of the United States but feel any regulations adopted for that purpose must be precise, well thought out and able to be amended if the negative consequences we cite in these comments come to fruition.

If you would like additional information or have any questions, please contact Rachel Banks at rachelb@nafsa.org or Joanne Carney at jcarney@aaas.org. Thank you for your consideration.

Sincerely,

Alliance for International Exchange
American Anthropological Association
American Association for the Advancement of Science
American Association of Collegiate Registrars and Admissions Officers

⁹ David Hart. On the Origins of Google. Available at https://www.nsf.gov/discoveries/disc_summ.jsp?cntn_id=100660.

¹⁰ Stuart Anderson. Immigrants Keep Winning Nobel Prizes. Forbes. October 8, 2017, Available at <https://www.forbes.com/sites/stuartanderson/2017/10/08/immigrants-keep-winning-nobel-prizes/#64bac23a117b>

American Astronomical Society
American Chemical Society
American Educational Research Association
American Geophysical Union
American Geosciences Institute
American Mathematical Society
American Meteorological Society
American Physical Society
American Physiological Society
American Psychological Association
American Society for Microbiology
American Society of Agronomy
American Society of Civil Engineers
American Sociological Association
Association for Applied Psychophysiology and Biofeedback
Association for Psychological Science
Association for Research in Vision and Ophthalmology
Association for Women in Mathematics
Association of Population Centers
Behavior Genetics Association
Cognitive Science Society
Conference Board of the Mathematical Sciences
Consortium of Social Science Associations
Crop Science Society of America
Ecological Society of America
Federation of Associations in Behavioral and Brain Sciences
Geological Society of America
INFORMS – The Institute for Operations Research and the Management Sciences
Institute of Mathematical Statistics
International Society for Developmental Psychobiology
Midwest Political Science Association
NAFSA: Association of International Educators
National Association for College Admission Counseling
National Association of Mathematicians, Inc.
National Association of Plant Breeders
National Council of Teachers of Mathematics
OSA, The Optical Society
Population Association of America
Presidents' Alliance on Higher Education and Immigration
Psychonomic Society

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Society for Biomaterials

Society for Computers in Psychology

Society for Industrial and Applied Mathematics

Society for Mathematical Psychology

Society for Neuroscience

Society for Personality and Social Psychology

Society for Text and Discourse

Society of Engineering Science

Society of Multivariate Experimental Psychology

Soil Science Society of America

SPIE, The International Society for Optics and Photonics

The Oceanography Society