

# SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

Supplemental Questions for Visa Applicants  
OMB Number 1405-0226  
DS-5535

## A. JUSTIFICATION

1. The Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, sets out application and eligibility requirements for aliens seeking to obtain nonimmigrant and immigrant visas. Most of the standards for determining visa eligibility are detailed in INA section 212(a), 8 U.S.C. § 1182(a), which includes terrorist activities and other security and related grounds at INA section 212(a)(3), 8 U.S.C. § 1182(a)(3).

INA section 221(a), 8 U.S.C. § 1201(a) provides that a consular officer may issue an immigrant or nonimmigrant visa to an individual who has made a proper application, subject to applicable conditions and limitations in the INA and related regulations. Under Section 222(c) of the INA, 8 U.S.C. § 1202(c), every alien applying for a nonimmigrant visa must provide certain identifying particulars – name, date of birth and birthplace, nationality, purpose and length of intended stay in the United States, marital status – and “such additional information necessary to the identification of the applicant, the determination of his eligibility for a nonimmigrant visa, and the enforcement of the immigration and nationality laws as may be by regulations prescribed.” Similar requirements apply to applicants for immigrant visas, pursuant to INA section 222(a), 8 U.S.C. § 1201(a). Under regulations set out in Title 22 of the Code of Federal Regulations, visa applications must be made on a standard form and adjudicating consular officers “may require the submission of additional necessary information or question an alien on any relevant matter whenever the consular officer believes that the information provided in the application is inadequate to permit a determination of the alien’s eligibility to receive a nonimmigrant visa.” 22 C.F.R. 41.103; *see also* 22 C.F.R. 42.63 (immigrant visas).

In a Memorandum for the Secretary of State, the Attorney General, and the Secretary of Homeland Security, issued March 6, 2017 (“Presidential Memorandum”), the President stated that “[t]o avert the entry into the United States of foreign nationals who may aid, support, or commit violent, criminal or terrorist acts, it is critical that the executive branch enhance the screening and vetting protocols and procedures for granting visas, admission to the United States, or other benefits under the INA.” To that end, the recipient Cabinet officials were directed, as permitted by law, to:

implement protocols and procedures as soon as practicable that in their judgment will enhance the screening and vetting of applications for visas and all other immigration benefits, so as to increase the safety and security of the American people. These additional protocols and procedures should focus on:

- (a) preventing the entry into the United States of foreign nationals who may aid, support, or commit violent, criminal, or terrorist acts; and
- (b) ensuring the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility or deportability, or grounds for the denial of other immigration benefits.

Consistent with the authorities listed above, and responsive to the Presidential Memorandum's directive to ensure the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility, the Department of State requests the extension of this collection to supplement the DS-160, DS-260, DS-156, and DS-230 forms by asking the following questions of a subset of nonimmigrant and immigrant visa applicants worldwide:

- The applicant's travel history over the last 15 years;
- The full names and dates of birth of any siblings/children/former spouses/domestic partners not recorded in the applicant's visa application form;
- The applicant's addresses during the last 15 years, if different from the applicant's current address;
- The applicant's prior passport numbers;
- The applicant's prior occupation(s) and employers (plus a brief description, if applicable) looking back 15 years;
- All phone numbers used by the applicant in the last five years; and
- All email addresses and social media identifiers, also known as handles, with associated platforms, used by the applicant in the last five years.

Regarding travel history, an applicant may be requested to provide details of his or her international or domestic (within their country of nationality or residence) travel, if it appears to the consular officer that the applicant has been in an area while the area was under the operational control of a terrorist organization as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(3)(B)(vi). Applicants may be asked to recount or explain the details of their travel and when possible, provide supporting documentation.

2. If a Department of State consular officer adjudicating a visa determines that the circumstances of a visa applicant, a review of a visa application, or responses in a visa interview indicate a need for greater scrutiny, the officer must collect the proposed additional information. The additional information will be used to resolve questions about the applicant's identity or to vet for terrorism, national security related, or other visa ineligibilities. This additional information collected from individual visa applicants, when assessed in the context of existing U.S. government information holdings, responsible U.S. agencies' knowledge of the identity of applicants, and an understanding of existing and evolving threats to national security, enables more rigorous evaluation of applications and serves to implement and advance the goals of the aforementioned authorities and directives.

Consular posts worldwide regularly engage with U.S. law enforcement and partners in the U.S. intelligence community to identify characteristics of post applicant populations warranting increased scrutiny. The additional information collected will facilitate consular

officer efforts to immediately apply more rigorous evaluation of these applicants for visa ineligibilities. In accordance with existing authorities, visas may not be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

The request for social media identifiers and associated platforms was new for the Department of State on the basis described here. The Department has been collecting this information since May 2017, following publication of details about the intended collection in the Federal Register, submission of comments from the public, and temporary approval by OMB. One rationale for the request for social media identifiers and platforms is that terrorist groups, including ISIS, al-Qa'ida, and al-Qa'ida's affiliates, actively use social media to disseminate official messaging, recruit potential members, and mobilize supporters to commit violence. Department of State consular officers will use the social media identifier information and other information collected in the visa adjudication process with partner U.S. government agencies to determine certain applicants' eligibility for a visa under existing statutory grounds of inadmissibility, so as to more rigorously evaluate terrorism, national security-related, or other visa ineligibilities under INA section 212(a)(3), 8 U.S.C. § 1182(a)(3), as directed by the Presidential Memorandum.

3. This collection involves consular officers asking these questions of a subset of nonimmigrant and immigrant visa applicants worldwide either orally or by providing a copy of the questions electronically or on paper. When the collection is provided electronically, by email, applicants will generally be permitted to provide the response in an email. In some instances, when a paper copy is provided the applicant may still be permitted to return it electronically. The objectives could not all be achieved solely by electronic collection, because an interview may be required to determine who should be asked the questions.

4. To our knowledge, this collection is not duplicative of another existing collection. To the extent any questions are covered in OMB Control Number 1405-0182 (Online Application for Nonimmigrant Visa (DS-160)), OMB Control Number 1405-0018 (Nonimmigrant Visa Application (DS-156)), OMB Control Number 1405-0185 (Electronic Application for Immigration Visa and Alien Registration (DS-260)), and OMB Control Number 1405-0015 (Application for Immigrant Visa and Alien Registration (DS-230)), applicants will be instructed to provide the information only if they have not provided it in one of these forms during the current application. This collection is intended to supplement the existing collections for a subset of visa applicants.

5. This information collection does not involve small businesses or other small entities.

6. Consistent with the authorities detailed above, this information collection is responsive to the directive in the Presidential Memorandum to "ensur[e] the proper collection of all information necessary to rigorously evaluate all grounds of inadmissibility" on the part of individuals applying for a nonimmigrant or immigrant visa. Failure to collect the information would impede such rigorous evaluation and the national security purposes for which it was directed when the circumstances of an individual applicant, a review of a visa application, or responses in a visa interview indicate a need for additional information to resolve the applicant's identity or to vet for terrorism, national security-related, or other visa ineligibilities. Failure to provide requested information will not necessarily result in visa denial, if the consular officer determines the applicant has provided a credible explanation why he or she cannot answer a question or has not provided requested supporting

documentation, such that the consular officer is able to conclude that information provided is adequate to determine the applicant's identity and eligibility to receive the visa. The information will be collected once per application, at most. It is not possible to collect the information less frequently, as consular officers need up-to-date information to determine efficiently whether an applicant is eligible to receive a visa and the responses to the questions will change for an applicant over time.

7. No special circumstances exist.

8. The Department of State (Visa Office, Bureau of Consular Affairs) published a 60-day notice in the Federal Register on August 3, 2017 (82 Fed. Reg. 36180). Comments were received via email and posts to regulations.gov, and the Department received a total of 12,052 comments on this publication. There were 12,010 comments during the response period, and an additional 42 comments outside of the comment period. Nine comments were non-responsive, and twenty additional comments simply opposed the proposal. Numerous comments were substantively similar and there were many overlapping issues. In those situations, the Department presents below a unified response. The Department further solicited comments in a 30-day public notice on November 27, 2017 (82 Fed. Reg. 56099). OMB provided the Department with 1,154 public comments received during that period. 1,144 of these comments opposed the proposal, five supported it, and five were nonresponsive. The comments opposing the proposal raised issues substantively similar to those addressed herein. Below are descriptions of the comments received during the 60-day comment period, followed by Department responses:

- a) The estimated burden of 60 minutes per collection does not accurately reflect the burden to applicants. Raised by the Brennan Center for Justice (Brennan Center) and eight other commenters.

**Response:**

The Department's estimated burden on affected visa applicants represents the anticipated average response time. The Department recognizes that some applicants may take longer to respond to the information request, while other applicants may be able to compile the information more rapidly.

- b) One commenter expressed concern that the language of the notice, which states the information will be used to "vet for terrorism, national security related, or other visa ineligibilities," is broader than the language contained in the emergency request for this collection. The commenter believed the broader language indicated the collection would be used for additional purposes. Raised by the Mayor of New York's Office of Immigrant Affairs.

**Response:**

The phrasing used in the notice differs from that used the emergency request to closely track and reflect the structure of the INA. This information collection applies only to visa applicants that consular officers determine warrant increased scrutiny. While many visa ineligibilities could have national security implications, INA section 212(a)(3), 8 U.S.C. § 1182(a)(3), is specifically termed "security and related grounds." As always, information that comes to light during a visa adjudication will be used to determine whether an individual applicant is eligible for a visa under U.S. law.

- c) The collection of this information requires proposed notice and rulemaking subject to public comment, which the requester asserted “must include definitions for these terms, the scope of the information being collected, and the ways in which it will be used so that the public may adequately comment.” Raised by the American Civil Liberties Union (ACLU). Two other commenters raised issues related to rulemaking procedures and compliance with the APA.

**Response:**

This information collection is governed by the Paperwork Reduction Act (PRA). It is not a rule or regulation requiring a rulemaking proceeding under the Administrative Procedures Act (APA). While both the APA and PRA prescribe requirements for public comment, the Department is accepting comments from the public in compliance with the PRA. The Department is committed to fulfilling its obligations for soliciting and considering comments from the public.

- d) Many commenters expressed concerns related to the request for “Social media platforms and identifiers, also known as handles, used during the last five years” and how it will be examined during a visa adjudication. These inquiries and comments included:

- The phrasing of the request for social media identifiers and platforms “is insufficient to provide guidance on the scope of required disclosure.” Raised by the Brennan Center and seven other comments raised similar concerns.
- “The phrasing suggests that travelers who maintain multiple accounts on a single platform – perhaps a personal one and a professional one – will need to disclose all such accounts, raising the risk that they will be held accountable for all posts on a particular profile even when they exercise only partial control.” Raised by Brennan Center and five other commenters.
- Applicants may be denied “because they do not have social media accounts.” Raised by International Refugee Assistance Project (IRAP) and seven other commenters.
- “To what extent will agents review applicants’ online presence?” Raised by Asian Americans Advancing Justice (AAAJ).
- “Will this permit searching of both ‘public’ and ‘private’ information and interactions i.e. will it include activities only visible to validated friends and direct messaging[?]” Raised by Privacy International and two other commenters.
- “As recently as February 2017, the Office of the Inspector General (OIG) issued a report concluding that the Department of Homeland Security’s (DHS) social media screening pilot programs do not have clear success criteria, and that DHS therefore may not be able to design an effective social media screening program.” Raised by ACLU and three additional commenters.
- “Exploiting this data for bulk mining or algorithmic analysis would further amplify many of the privacy and discrimination-oriented concerns highlighted above.” Raised by the Brennan Center and three other commenters. The

Brennan Center's comment continued that "collecting social media and other data for the purpose of vetting foreign travelers in order to subject it to algorithmic analysis seems highly unlikely to contribute measurably to domestic safety and security."

**Response:** With respect to the social media identifier and platform portion of this collection, the Department is requesting that applicants provide their unique user names for any websites or applications the applicants have used to create or share content (photos, videos, status updates, etc.) as part of a public profile. This is not expected to include accounts designed for use by multiple users within a business or other organization. The Department is not requesting, and does not intend to request, passwords. Visa applicants credibly representing that they have not used social media will not be adversely affected by not providing a social media handle.

The additional information requested on the form, including social media platforms and identifiers, will be used to resolve questions about the applicant's identity or to vet for national security-related and other statutory visa ineligibilities.

The information will be assessed in the context of existing U.S. government information holdings, responsible U.S. agencies' knowledge of the identity of applicants, and an understanding of existing and evolving threats to national security, to enable more rigorous evaluation of applicants. Within consular and fraud prevention sections of the Department's overseas posts, public-facing social media information may be reviewed to assess potential visa fraud that would lead to a conclusion that the applicant is not eligible for a visa. For example, information on social media pages or posts may be used to validate legitimate relationships or employment establishing visa eligibility, to identify indicia of fraud, or to identify misrepresentations that disguise potential threats.

The Department is aware of the February 2017 DHS Office of Inspector General Report on DHS' pilot programs for social media screening. Social media screening capabilities and effectiveness continue to evolve. The Department is constantly working to find mechanisms to improve our screening processes and to support legitimate travel and immigration to the United States. Where increased scrutiny is warranted, social media identifiers may provide U.S. consular officers an effective additional means for vetting visa applicants for identity resolution or specific visa ineligibility grounds.

e) The Department received numerous comments expressing a deep concern about the privacy implications of the proposed collection, largely related to the collection of social media identifiers, and the possibility that it may chill free expression. These inquiries and comments included:

- The collection is an invasion of privacy. One commenter specifically stated that "to permit monitoring of social media is to give a deep understanding of our social interactions, our habits, our locations and our daily lives." Raised by Privacy International and 256 additional commenters.
- "This requirement is basically an illegal search and seizure." Raised by Katherine Bond and 60 other commenters who cited Fourth Amendment considerations.

- “The notice provides no clarity regarding how the Department intends to comply with existing privacy laws, such as the Privacy Act or Judicial Redress Act, which provide certain protections for U.S. citizens, green card holders, and some non-U.S. citizens.” Raised by the ACLU.
- “Travelers may, out of an abundance of caution, refrain from posting certain opinions, reacting to certain articles, visiting certain locations, or associating with certain people that may raise suspicion, or simply be embarrassing, in the event border agents review it.” Raised by Muslim Advocates. 10,265 additional commenters raised similar concerns that this would impact free expression.
- “A system that potentially penalized people for statements they make online due to misinterpretation is profoundly incompatible with core American constitutional values.” Raised by the Brennan Center. 177 other commenters expressed similar sentiments that the proposal was contrary to American ideals or the Constitution.
- “Inevitably, this information will include the identities and communications of those living in the United States, including U.S. citizens, who are connected in some fashion to the visa applicant.” Raised by ACLU and nine other commenters.
- “Fundamental guidelines with regard to how the requested information will be collected, how the data will be retained and safeguarded, and how the data will be used, and whether the data will be shared with other agencies and what policies will govern such exchange of information have yet to be disclosed.” Raised by the National Iranian American Council (NIAC) and nine other commenters.
- “U.S. government systems have been repeatedly hacked by state and non-state actors, demonstrating that U.S. government storage of personal information is vulnerable to outside intrusions.” Raised by Muslim Advocates. Three other commenters raised substantively similar concerns about the safeguards protecting the collected information.
- “Human rights defenders who live in repressive regimes are particularly vulnerable if such data collection is allowed. Such individuals rely on anonymous online identities to further their activism in a manner that provides some protection from government reprisals; destroying that anonymity by forcing them to link their online presence to their official identities.” Raised by AAJ. 1,434 other commenters discussed similar concerns with regards to vulnerable populations in their home countries.

**Response:** The Department respects the right to hold opinions without interference and freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds.

Consular staff are directed not to engage or interact with individual visa applicants on or through social media when conducting assessments of visa eligibility; not to request user passwords in furtherance of this collection; not to violate or attempt to subvert individual

privacy settings or controls the applicants may have implemented on social media platforms; and not to use social media or assess an individual's social media presence beyond established Department guidance. Consular officers will be mindful that, unlike some other forms of personal information required from visa applicants, social media identifiers may afford the user anonymity. Posts will assess their respective operating environments and collect the social media identifier information from applicants in a manner that best safeguards its transmission from applicant to post. Only that information which a social media account holder shares publicly will be viewed by the Department. Department employees who set up an account on a social media website for the purpose of visa eligibility assessments must abide by the contractual rules of that service or platform provider. With regard to concerns that United States citizen communications may become involved in the collection, the Department limits its collection to information relevant to a visa adjudication. The Department requires that consular staff collect and use social media information only where it is relevant and necessary to make an eligibility determination for the visa applicant. With that in mind, consular staff are also directed in connection with this collection to take particular care to avoid collection of third-party information when conducting any review of social media information. Other U.S. government agencies authorized to access visa records are subject to other legal restrictions

To the extent that some commenters expressed concern with reports of requests for passwords by customs officials or perceived violations of the Fourth Amendment, the Department reiterates that it is not requesting passwords and will only review information that users have allowed to be viewable to the public.

The Department is mindful that personal information provided in all visa applications may be of a sensitive nature. All information collected as a part of this collection is confidential under INA section 222(f), 8 U.S.C. § 1202(f) and will be protected accordingly. Such information is to be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that, in the discretion of the Secretary of State, it may be made available to a court or provided to a foreign government if the relevant requirements stated in INA section 222(f), 8 U.S.C. § 1202(f), are satisfied. The same safeguards and confidentiality provisions that protect the personal information in a visa application apply to the additional information collected on the DS-5535 or obtained via social media identifier information.

The Department takes its responsibilities to protect the confidentiality of visa records and compliance with various privacy laws seriously. With regard to the Judicial Redress Act of 2015, Public Law 114-226, the Department's Bureau of Consular Affairs is not a designated federal agency or component under that law. *See* 82 Fed. Reg. 7860. The Department's System of Record Notice (SORN) on Visa Records (STATE-39) describes the safeguards that protect certain visa records which are governed by the Privacy Act. These safeguards include thorough background investigations of Department staff, controlled access to Department systems, and annual training on the protection of sensitive but unclassified information. While the Department's Visa SORN applies only to certain visa records, the safeguards described therein also help to ensure the protection of all visa records maintained in Department systems.



- f) Many comments focused on what information from social media might impact visa decisions, including political statements or loose connections on social media platforms. These inquiries and comments included:
- “Could activity in protest of the U.S. President and his policies warrant rejection by a visa officer?” Raised by NIAC. Other commenters similarly asked for specifics regarding what information contained in social media postings or pages may result in a denial. Approximately 11,500 commenters raised this concern.
  - Several commenters queried what impact associations, friendships, or likes on social media would have upon a visa application? Raised by AAAJ and four other commenters.
  - “Given the context-specific nature of social media it could lead to misconstrued communications being treated as nefarious and result in rejected visa applicants.” Raised by Privacy International and 11,603 other commenters raised substantively similar concerns
  - “It remains unclear if the applicant will have an opportunity to correct any erroneous, misleading, or unsubstantiated information derived from the identifiers that generated the denial.” Raised by ACLU and three other commenters.

**Response:** To reiterate, the Department respects the right to hold opinions without interference and freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds. Visa denials must be based on specific statutory visa ineligibilities. In accordance with existing authorities, visas may not be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation. Consular officers determine visa eligibility based on standards set out in the INA and other applicable U.S. law. Most of these standards are in INA section 212(a), 8 U.S.C. § 1182(a), which describes activities that trigger visa ineligibility. To determine an applicant’s visa eligibility under the INA, consular officers evaluate all available information, including the responses and perceived credibility of the visa applicant during the visa interview. The adjudicating officer makes a determination based on the totality of the circumstances, in light of the legal standards. While an applicant’s political views expressed on social media are not generally relevant to the applicant’s visa eligibility, some social media activity may be evidence of activity, ties, or intent that are grounds for visa denial under the INA, including the grounds of terrorism-related ineligibility in INA section 212(a)(3)(B), 8 U.S.C. § 1182(a)(3)(B).

To the extent the public is concerned about possible misinterpretation of social media postings, the Department recognizes this challenge presented by the various contexts in which individuals post to social media. The collection of social media identifier information is simply an additional tool for identity resolution and to screen visa applicants for ineligibilities set forth in the INA and other applicable law. To the extent that any social media posting is reviewed, the Department acknowledges that the context

and circumstances of the applicant, culture, country conditions, the nature of the account, and other postings will inform the interpretation of any social media post.

Under INA section 212(b), 8 U.S.C. § 1182(b), an alien denied a visa based on inadmissibility under INA section 212(a), 8 U.S.C. § 1182(a), generally is entitled to notice of the determination including “the specific provision or provisions of law under which the alien is inadmissible,” with the exception of denials under INA section § 1182(a)(2) or (3), for which such notice is not required. If a visa applicant believes such decision to be incorrect, he or she may apply again in the future, which will provide him or her the opportunity to demonstrate his or her eligibility for a visa. Where an applicant believes that the immigration laws were applied incorrectly, the applicant or representative may pose legal questions regarding pending or recently completed visa cases by email to the Department at LegalNet@State.gov. Visa applicants generally are not entitled to copies of their visa records, as those records are considered confidential under INA section 222(f), 8 U.S.C. § 1202(f), and are exempt even from requests under the Freedom of Information Act.

g) The Department received various comments related to the burden and chilling effect on applicants, the burden on the government, and the possibility of backlogs resulting from increased information collection. These comments also questioned the utility of the information collected and how it improved the vetting procedures. These inquiries and comments included:

- In expressing that the collection may be confusing to an applicant, a commenter stated that “we have seen through prior experience that chaos and confusion on entry policies can lead to a potentially chilling effect on travel and cause anxiety about coming to the United States.” U.S. Travel Association, American Hotel and Lodging Association, and U.S. Chamber of Commerce’s U.S. Travel Association (USTA) comment. Their comments continued with: “this will not just have an impact on the travel industry – but will have broader negative repercussions for other sectors of the U.S. economy.” 10,213 other commenters expressed similar concern that it would deter travel to the United States.
- Several commenters suggested that the proposal’s purpose was to decrease the number of visa applicants. For example, Gerald Schatz stated “The proposed collection remains arbitrary, burdensome, and intended primarily to deter visa applicants.” Six other comments raised similar concerns.
- “Collecting this information will result in fewer interviews per consular officer and thus will generate interview backlogs.” Raised by IRAP. 33 other commenters raised similar concerns. Some commenters specifically raised concerns for those in the scientific community who are seeking to attend conferences on specific dates and students with precise enrollment dates.
- Many commenters expressed that the collection is burdensome to the government and applicants. NIAC stated that “in addition to being burdensome on visa seekers, this proposal places an enormous cost on the already limited resources of the State Department.” Another comment stated that “the Administration has not sufficiently addressed the enormous

administrative burden that the Department’s proposal will impose on U.S. border officials and the negligible national security and intelligence benefit that will be gained in return.” Raised by Muslim Advocates. 79 additional commenters raised similar concerns.

- “Even high-level U.S. government security clearances only go back ten years, making this requirement burdensome to the point of absurdity.” Raised by AAAJ and 10 other commenters.
- “The Department of State has been processing applications for visas for admission to the U.S. for almost two hundred years without collecting this information. There is no indication in the notice of any circumstances in which not collecting any specific item on this list which would not already be available to the Department of State, much less all of the items on the list, would in any way prevent the Department from properly adjudicating a visa application.” Raised by Restore the Fourth and 17 additional commenters. Several other commenters also suggested existing vetting procedures are sufficient or that the Department’s existing protocols allow the consular officers to request additional information from applicants.
- Several comments stated that the information being collected does not appear useful to the vetting process. For example, AAAJ stated that “the Department seems to be operating under the false paradigm that ‘more information means more security.’” 1,484 other commenters expressed substantively similar concerns.
- “Someone trying to evade detection would simply put what they know are safe answers, knowing it will not be verified for years.” Daniel Hertz and 27 other commenters.
- “We ask that the U.S. government formally decide what tools it can use to send a strong message of welcome to legitimate international travelers. As new policies are developed, this welcome message should be purposefully interwoven into the rollout.” Raised by USTA.
- This collection “will threaten national security by worsening the US’s standing and reputation in the world.” R. Bingham. Others similarly stated that “the proposal will end up hurting – not helping – U.S. security interests.” By Masha Payesteh and 1,436 additional commenters.

**Response:** National security is our top priority when adjudicating visa applications. Every prospective traveler to the United States undergoes extensive security screening; however, where a consular officer determines that an applicant warrants increased scrutiny, there is reason to require the applicant to provide additional information. This collection is designed to standardize a set of basic additional information collected from applicants who present the need for additional scrutiny. Maintaining robust screening standards for visa applicants is a dynamic practice that must adapt to emerging threats. The collection will be undertaken only when the consular officer determines that additional scrutiny is warranted. The Department is constantly working to find

mechanisms to improve our screening processes and to support legitimate travel and immigration to the United States, while protecting our borders.

Commenters are correct that consular officers already have the authority to request additional information from visa applicants during the course of visa adjudication; however, to standardize the additional inquiries of applicants who warrant additional scrutiny, the Department is required to secure OMB approval.

With the visa application process, the Department seeks to balance its primary goal of securing the U.S. border with its goal of facilitating legitimate travel. The Department does not aim to unnecessarily burden visa applicants, but to obtain all information necessary to appropriately screen all prospective travelers. Where increased scrutiny is warranted, the additional information and social media identifiers provide an effective additional means for screening visa applicants for specific visa ineligibility grounds or for verifying the applicant's identity. This collection is anticipated to impact a small percentage of all visa applicants, and the Department does not anticipate that it will significantly impact processing times for the vast majority of visa applicants.

While the Department appreciates that some individuals may not be entirely truthful in responding to the additional questions, that is true in any request for information and does not render the collection unnecessary.

Specifically related to student and exchange visitors, the Department recognizes the many potential benefits of foreign visitors in these categories. The Department also recognizes the significant contributions that student and exchange visitors provide to the U.S. economy. With that in mind, the Department's goal is that every eligible student visa applicant is able to begin his or her program of study on time. Our embassies and consulates give priority to appointments for student and exchange visitor visa applicants. Student visas now can be issued 120 days before studies begin and applicants are encouraged to apply as soon as possible.

The Department recognizes the economic and cultural value of all eligible visa applicants and intended visitors. Consistent with the Department's mission, this proposal seeks to balance its goals of securing the U.S. border while facilitating legitimate travel that significantly contributes to economic and cultural exchange. The Department aims to manage the visa process strictly, but fairly, in order to best protect the United States. Travel to the United States continues to be welcomed and encouraged.

h) Many comments reflected a concern that the affected class of applicants was insufficiently described, and may be selected with discriminatory motives, or result in discriminatory treatment. These inquiries and comments included:

- The materials do not "clearly indicate how visa applicants will be selected for heightened screening and vetting." Raised by MOIA, and 21 other comments raised substantively similar concerns about the vague description of the affected applicants.
- "Both the Department's most recent notice in the Federal Register, as well as its original notice asking for emergency review, stated that the supplemental questionnaire is meant to implement the original March 6 travel ban that prohibited travel to the United States from Iran, Libya, Somalia, Sudan, Syria,

and Yemen. In addition, as we pointed out in our previous comments responding to the Department’s request for emergency review, in Fiscal Year 2015 there were approximately 65,000 nonimmigrant visas issued to citizens from those six countries, which may well be where the Department obtained its uncited ‘65,000’ figure for the number of estimated responses to the questionnaire.” Raised by Muslim Advocates and six additional commenters.

- One commenter expressed that his objections remained: “in view of the President’s 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,” we wish to make clear that our objections to the proposed information collection still stand.” Raised by Gerald Schatz.
- “DOS should provide additional guidance about when the information collection will be used, to avoid the perception of discriminatory application.” Raised by Bitta Mostofi, Acting Commissioner for the Office of Immigrant Affairs for the New York City Mayor. 1,471 additional commenters raised substantively similar concerns about the possibility of discriminatory application.
- “The blatant religious animus expressed by the senior leadership of the Trump Administration, coupled with the broad and essentially unfettered discretion suggested by this Proposal and the near-total lack of protection in the Proposal, will lead to a pronounced increase in racial and religious profiling in the visa issuance process.” Raised by Asian Americans Advancing Justice (AAAJ). AAJ also asked: “How will agents ensure unconscious or conscious bias do not dictate whether an applicant obtains a visa?” A further 1,440 comments expressed concerns that the collection was motivated by bias against Muslims.
- “The likely result will be that Muslims will be disproportionately monitored and surveilled without any indication that they have violated the law.” Raised by AAJ and 1,430 additional commenters
- “The information collected from applicants will create a cache of data on people of a certain faith background – a significant step toward making the ‘Muslim registry’ that President Trump promised during his campaign a reality.” Raised by Muslim Advocates and one additional commenter.

**Response:** Applicants will be asked to provide this information when a consular officer determines the additional information is necessary to confirm identity or that more rigorous national security vetting should be conducted because the consular officer determines that information about the applicant raises individual concerns or the applicant falls within a population identified by post, through post’s routine engagement with U.S. law enforcement and partners in the U.S. intelligence community, as warranting increased scrutiny. This determination may be based on circumstances in the application itself, a review of automated screening results, or responses in a visa interview. The precise circumstances that will indicate the need for increased scrutiny will be determined on a case-by-case basis and subject to localized, and sometimes

sensitive information and expertise at consular posts worldwide. Visas may not be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

This collection request seeks to implement the President's Memorandum of March 6, 2017, mandating that the Department enhance the screening and vetting protocols and procedures for granting visas. This collection is designed to enhance the Department's ability to resolve questions about an applicant's identity and vigorously vet applicants under statutory visa ineligibility grounds. Resolving visa applicants' identities and vetting for terrorism, national security-related, or other ineligibilities remains a top priority for the Administration.

In developing the proposal, the Department's estimated respondent pool was premised upon 0.5% of an estimated 13 million visa applicants worldwide. The estimate of 65,000 respondents was not based upon the number of applicants from any particular country or subset of countries, and reflects a worldwide estimate. After reviewing the data from the first five months of its implementation, the Department believes that the estimated burden should be adjusted to 70,500 annually. This number is based on the fact that consular officers solicited this information from an estimated 25,000 visa applicants worldwide between May 2017 and October 2017, an average of approximately 193 cases per day. The Department acknowledges that the estimate may be imprecise, but believes it is a more accurate estimate than its previous estimate, because it is based on actual experience.

Consular officers are required to undertake significant training prior to adjudicating visa applications. In accordance with 8 U.S.C. § 1734, this training includes specialized training in effective screening and extensive training in cultural-sensitivity towards visa applicants. In accordance with their training, which continues throughout their career, consular officers adjudicate visa applications solely based on visa ineligibilities under existing U.S. law, which do not allow visas to be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation.

This collection is not specific to nationals from any particular country or any particular religion, and it is not mandated for all nationals of any particular country or any particular religion. The purposes of the collection are strictly limited to collecting information necessary to properly determine individual visa applicants' identity and vet for national security-related visa ineligibilities.

- i) The Department received comments related to situations when a visa applicant may be unable to provide certain information, and the impact of the failure to report such information. Comments related to these concerns included:
- "Consular officers will have license to reject an application for failure to comply with this collection, constituting a new, extra-statutory grounds for potential denial." Raised by IRAP and four additional commenters.
  - "Compiling address and biographic information going fifteen years into the past is a cumbersome burden that many individuals, particularly from underdeveloped countries without extensive records, will not reasonably be able to complete. Addresses from many countries will be only rudimentary,

including only a city, neighborhood and, possibly, nearby landmarks.” Raised in a comment of the International Refugee Assistance Project and 8 additional commenters raised concerns about the difficulty in compiling or reporting the information.

- “This poses yet another threat – that applicants’ inadvertent mistakes will later be used against them if they attempt to adjust their status.” Raised by AAAJ. 26 other commenters raised similar concerns that inadvertent reporting errors could result in future visa denials.

**Response:** The Department acknowledges that human memory is imperfect. The Department is also aware that historical information, including address history, birthdates, and familial relationships, will take a variety of forms in different nations around the world, and may in some cases be difficult to obtain. Applicants are instructed to provide the information to the best of their knowledge. If an applicant’s address history includes a home without a specific street address, the Department is cognizant that country conditions may make this the most precise address available.

An applicant who willfully misrepresents a material fact in a visa application may face immigration or criminal consequences. In any visa application or form, the determination of whether an applicant’s reporting constitutes a willful misrepresentation of material fact for purpose of visa ineligibility is determined on a case-by-case basis. A willful misrepresentation is distinct from an accidental or inadvertent mistake and requires intent by a visa applicant. Materiality is determined in the context of individual cases, and whether the misrepresentation would have impacted the proper resolution of the alien’s application for a visa. Generally, an inadvertent reporting error should not impact an applicant’s ability to receive a visa or immigration benefits.

- j) “Americans could be subject to stricter scrutiny when traveling abroad if the Department’s rule is permanently implemented. This scrutiny could result in visa denials or involuntary detention for activities that are perfectly legal in the United States and many other parts of the world.” Raised by Muslim Advocates and 10,161 other commenters.

**Response:** In developing the proposal, the Department was mindful that other countries may impose reciprocal requirements on U.S. travelers bound for their countries. The Department seeks to balance its multiple missions: protecting U.S. citizens, securing the U.S. border, and facilitating legitimate travel to and from the United States. Where increased scrutiny is warranted, this additional information, including social media identifiers, may provide U.S. consular officers an effective additional means for vetting visa applicants for specific visa ineligibility grounds.

- k) “Your attempt to gather all information from social media & elsewhere for incoming refugees, et al. should NOT occur. This information may provide false information that helped them save their lives & the lives of other family members & friends.” Raised by Brett Greisen.

**Response:** Refugee applicants are processed through a different application process than visa applicants. This collection applies only to some nonimmigrant and immigrant applicants, not to refugees.

- l) “In regards to asking individuals about their social-media handles, I think it is completely reasonable. We are in an evolving world and the government needs to keep up with the changes and trends in the world culture.” Raised by Octavio Borrego. Six other commenters expressed support for the proposal as necessary to fully vet applicants, and some of these commenters suggested that the Department collect additional information.

**Response:** The Department is constantly working to find mechanisms to improve our screening processes and to support legitimate travel and immigration to the United States, while protecting U.S. borders and citizens. This collection is intended to strike that balance.

9. No payment or gift is provided to respondents.

10. In accordance with INA section 222(f), 8 U.S.C. § 1202(f), information obtained from applicants in the nonimmigrant or immigrant visa application process is considered confidential and is to be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States, except that, in the discretion of the Secretary of State, it may be made available to a court or provided to a foreign government if the relevant requirements stated in INA section 222(f), 8 U.S.C. § 1202(f) are satisfied.

11. Proposed additional questions covering prior passports, phone and e-mail contact information, and additional travel, address and employment history are similar in nature to questions currently on the immigrant and nonimmigrant visa application forms and thus do not for the most part present new or unusual sensitivities; they simply cover a longer time period. The requests for names and dates of birth of siblings and, for some applicants, children are new but do not implicate particular sensitivities, especially in light of the confidentiality of visa records pursuant to INA section 222(f), 8 U.S.C. § 1202(f). The Department of State currently requests certain historical information for a period of five years from all visa applicants. For example, visa applicants are asked to provide travel, employment, and address history for the prior five years. Using the same time period for social media platforms and identifiers is a reasonable period that should be generally ascertainable for visa applicants.

The Department recognizes that social media information may be of a sensitive nature for some visa applicants. Consular officers are already directed not to engage or interact with individual visa applicants on or through social media when conducting assessments of visa eligibility; not to violate or attempt to violate individual privacy settings; and not to use social media or assess an individual’s social media presence beyond established Department guidance. Consular officers will be mindful that, unlike some other forms of personal information required from visa applicants, social media identifiers may afford the user anonymity. Posts will assess their respective operating environments and collect the social media identifier information from applicants in a manner that best safeguards its transmission from applicant to post. Consular staff will also be directed in connection with this collection to take particular care to avoid collection of third-party information. The same safeguards and confidentiality provisions that protect the personal information in a visa application that is received by the United States will remain in effect for social media platforms and identifier information. The collection of social media platforms and identifiers will not be used to deny



visas based on applicants' race, religion, ethnicity, national origin, political views, gender, or sexual orientation. Consular officers will not request user passwords and will not attempt to subvert any privacy controls the applicants may have implemented on these platforms. As noted in paragraph 10 above, such information is confidential under INA section 222(f), 8 U.S.C. § 1202(f).

12. The Department estimates that 70,500 applicants annually will complete this collection.

Therefore, the Department of State estimates that the annual hour burden to visa applicants posed by the additional questions is 70,500 hours (70,500 applicants x 1 hour). Based on an average hourly wage of \$23.86<sup>1</sup>, the weighted wage hour cost burden for this collection is \$2,848,482. This is based on the calculation of \$23.86 (average hourly wage) x 1.4 (weighted wage multiplier) x 70,500 hours = \$ 2,848,482.

13. There are no anticipated monetary burdens associated with the additional questions posed as part of this information collection.

14. The Department of State estimates that the annual hour burden to consular service officers posed by the additional questions is 35,250 hours (70,500 applicants x .5 hour). Based on the hourly rate for Consular Time of \$135, the cost burden for this collection is \$4,758,750.00 (35,250 hours x \$135).

The Department conducts a biannual review of consular fees using its Cost of Service Model. Consular fees are generally set based on the policy of full cost recovery, and the Model is updated annually to take into account all costs to the U.S. government of providing consular services. The Model will be updated to include costs associated with processing this information, and those costs will be reflected in any future adjustments to the relevant visa fees.

15. The Department will make the following changes to the collection that was previously approved by OMB on May 23, 2017. The number of respondents and the burden has been updated to reflect actual experience with the collection. **In addition**, the Department will include certain clarifying instructions to the form. First, applicants will be advised that they do not need to provide information already listed in their primary visa application. A parenthetical in the instructions for listing children will be added that reads: "Children includes natural children, step-children, and adopted children." In the social media section, applicants will be advised they do not need to list accounts designated for multiple users within a business or other organization. Also, in order to provide clarity as to contractors, the Department will revise the form to direct applicants to provide "information on all employment," rather than "all employers."

Finally, the applicant's certification language will be updated. The Department will incorporate the following language into the signature block to meet this requirement:

*I understand all the information I have provided in, or in support of, this application may be provided to other U.S. government agencies authorized to use such information for purposes including enforcement of the laws of the United States. I understand all of the information contained in this form and I certify under penalty of perjury under the laws*

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<sup>1</sup> Source: Data from the U.S. Bureau of Labor Statistics' May 2016 National Occupational Employment and Wage Estimates for all occupations (<http://www.bls.gov/oes>). Retrieved October 2, 2017.

*of the United States of America that the foregoing is complete, true, and correct. I understand that any willfully false or misleading statement or willful concealment of a material fact made by me herein may result in refusal of the visa, denial of admission to the United States, and, may subject me to criminal prosecution and/or removal from the United States.*

16. The information gathered by this collection will not be published.

17. The Department of State will display the expiration date for OMB approval on the information collection.

18. The Department of State is not requesting any exceptions to the certification statement requirements.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.