

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION

Electronic Application for Immigrant Visa and Alien Registration
OMB Number 1405-0185
DS-260

A. JUSTIFICATION

1. *Why is this collection necessary and what are the legal statutes that allow this?*

The Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et seq.*, sets out application and eligibility requirements for aliens seeking to obtain immigrant visas. INA section 221(a), 8 U.S.C. § 1201(a) provides that a consular officer may issue an immigrant visa to an individual who has made a proper application, subject to applicable conditions and limitations in the INA and related regulations. INA section 222(a), 8 U.S.C. § 1202(a), specifically requires that an applicant provide the following information in an application for an immigrant visa: full and true name; any other names he/she has used or by which he/she has been known; age; sex; date of birth; place of birth; and such additional information necessary to the identification of the applicant and the enforcement of the immigration and nationality laws as may be by regulations prescribed.

Visa ineligibility grounds are detailed in INA section 212(a), 8 U.S.C. § 1182(a), INA section 208(d) (6), 8 U.S.C. § 1158(d) (6), and other statutes. Among the grounds of ineligibility are those related to the health of the applicant, the applicant’s past and present criminal activities, security concerns, potential for the applicant to become a public charge, and previous violations of the INA by the applicant. In the visa application form, applicants are asked a series of questions relevant to a determination of visa eligibility.

Department of State regulations pertaining to immigrant visas are published in 22 C.F.R. Part 42. The regulations on filing an application for an immigrant visa are in 22 CFR 42.63.

Executive Order 13780 (*Protecting the Nation From Foreign Terrorist Entry Into the United States*) directs the Department of State and other agencies to implement a program, as part of the process of adjudicating applications for visas and other immigration benefits, to improve screening and vetting. Section 5 of the E.O. directed relevant agencies to develop a uniform baseline for screening and vetting procedures.

In addition, 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.

2. What business purpose is the information gathered going to be used for?

The information is gathered to enable consular officers to confirm the applicant's identity and determine visa eligibility under applicable U.S. law. Department of State consular officers will use the information collected in the visa adjudication process, coordinating with other Department officials and with partner U.S. government agencies as appropriate, for these purposes. This information is necessary to make these determinations.

3. Is this collection able to be completed electronically (e.g. through a website or application)?

Applicants are able to electronically fill out and submit the DS-260 online via the Consular Electronic Application Center at <http://www.travel.state.gov>. The Department employs industry standard encryption technology to maintain a secure connection during the online application process. Once the application is complete and the applicant has verified the answers provided, the applicant will electronically sign and submit the application. The applicant may print a copy of the application for record keeping purposes, but no paper copy of the application is separately submitted to the Department. The applicant will present to the consular officer a paper application confirmation page which will contain a record locator in the form of a barcode. The Department notes that while an applicant could save a copy of the barcode on a smart phone, Department scanners may not always be able to scan off smart phones. Further, all IV applicants are required to bring a copy of all components of their application for the consular officer's adjudication, and presumably, the barcode with the record locator will be included in this. The consular officer will scan the barcode to retrieve the electronic record of the application from the database. The electronic form will provide consular officers information needed to determine the eligibility of the applicant for a visa and will significantly reduce the need to solicit information during the applicant's interview. The electronic submission of the application to the Department will allow the information to be reviewed prior to an interview. The consular officer obtains the applicant's sworn affirmation and biometric signature at the time of the interview.

4. Does this collection duplicate any other collection of information?

To our knowledge, this collection is not duplicative of another existing collection. To the extent the DS-5535 (OMB Control Number 1405-0226) duplicates some questions posed in this collection, applicants completing the DS-5535 will be advised not to provide information already

reported in this collection. If this revision is approved, the Department will seek amendments to the DS-5535 to further avoid duplication.

5. Describe any impacts on small business.

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

6. What are consequences if this collection is not done?

This information collection is essential for confirming the applicant's identity and determining whether an applicant is eligible for an immigrant visa. An applicant completes the form once per visa application. It is not possible to collect the information less frequently, as consular officers need up-to-date information to determine whether an applicant is eligible to receive a visa.⁷ *Are there any special collection circumstances?*

No special circumstances exist.

8. Document publication (or intent to publish) a request for public comments in the Federal Register

The Department of State (Visa Office, Bureau of Consular Affairs) published a 60-day notice in the Federal Register on March 30, 2018 (83 FR 13806) and a 30-day notice in the Federal Register on August 28, 2018 (83 FR 43952), soliciting public comment on this collection. The Department received a total of 10,086 combined comments on this publication and on the simultaneous publication of the Application for Nonimmigrant Visa (OMB Control No 1405-182) via email and posts to regulations.gov during the 60-day comment period. OMB received a total of five comments during the 30-day comment period. Many commenters submitted a single comment addressing both collections, while some commenters submitted identical or similar comments on each collection. The Department received 569 comments that were exact duplicates by the same commenter on the same collection that were excluded from the tallies below. Given the overlapping comments on the two proposals, the Department totals below include the total on both collections.

349 comments were non-responsive, and 2,218 additional comments simply opposed the proposal without detailed explanation. Numerous comments were substantively similar and commenters raised many overlapping issues. In those situations, the Department presents below a uniform response. Below are descriptions of the comments received during the 60-day comment period, followed by Department responses:

- a) Time estimate "contains the implicit assumption that applicants would have no trouble complying with the new proposed social media questions in this information collection." American Hotel & Lodging Association, *et al* and 15 other commenters. Some commenters believed that the estimated burden was based solely on the additional questions.

Response:

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

United States government and for respondents represents the total burden, not simply the increase based on the additional questions being proposed.

b) Many commenters expressed concerns related to the request for social media identifiers and how they will be examined during a visa adjudication. These inquiries and comments included:

- “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.” American Hotel and Lodging Association, *et al.* 197 other commenters expressed a concern that there was no definition of “social media.”
- An anonymous commenter stated that there would be confusion with the optional social media question: “a lot of social media [sic] nowadays do not have their [sic] authorization system and rely [sic] on authentication services provided by Twitter, Facebook, Google, etc. It will be not clear which ID/login to provide if I registered on some platform and my account linked to 2 authentication options, for example, Google and Facebook. I suggest to cancel this initiative or limit it only to first field, where applicants will need to add usernames only for social media choose[n] by Department of State.”
- “[T]he proposed ‘option to provide information about any social media identifiers associated with any platforms other than those that are listed’ is also unclear how incomplete responses or leaving it blank will affect an individual’s application (for example, whether it will result in additional screening procedures or alternative forms of scrutiny).” – UN Special Rapporteur.
- Some commenters expressed concern about the number of accounts an individual could maintain, including accounts for which applicants may not be solely in control. For example, a number of organizations cosigned a comment stating that “because performing artists are public figures, their social media is often voluminous, and the content is largely beyond the control of the artists themselves.” Raised by Tamizdat, et al.
- “Are we going to refuse to give a visa to people who don't use social media?” Raised by Anthony Caggiano. 304 additional commenters also questioned whether individuals who lack social media presence will be denied visas as a result.
- Many commenters requested clarification on how social media information would be reviewed and assessed. For example, anonymous commenters asked “Will records of all personal and professional interactions be searched?” 318 other commenters also requested clarification of how social media will be reviewed or verified. 22 commenters queried whether private pages would be reviewed.
- “Even the most basic machine-based translation tools do not operate with sufficient accuracy to generate reliable translations, much less inferences

based on those translations. Most commercially available natural language processing tools are only effective for English-language text, and will likely misinterpret non-English text.” Raised by Muslim Advocates, and 89 other commenters expressed substantively similar concerns about the efficacy of social media review.

- “[T]here is no evidence that either robotic or human ‘pre-cogs’, or any algorithmic profiling ruleset, have any actual utility for predicting which individuals will engage in extremely rare acts of terrorism – regardless of the biographic data they are fed.” Raised by the Identity Project, et al. 70 other commenters raised substantively similar concerns, specifically citing DHS efforts at social media screening efforts, including a DHS OIG report on the efficacy of vetting initiatives.

Response: With the questions on the application relating to social media identifiers and platforms, the Department is requesting that applicants provide their identifiers for specific platforms listed on the application. The Department may update the list of platforms with the approval of OMB, if the intended use is consistent with that described in this collection. By using a list of specific platforms, it will be clear to applicants what is expected in response. Applicants are not expected to include accounts designed for use by multiple users within a business or other organization. Providing social media identifiers for non-listed platforms is purely optional. Applicants will be instructed that this does not include private messaging on person-to-person messaging services, such as WhatsApp. Failure to answer the optional question will have no negative impact upon the visa adjudication. 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, including social media platforms and identifiers, will be used to resolve questions about the applicant’s identity or to determine visa eligibility.

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 required for 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 referenced by some commenters. Social media screening capabilities and effectiveness continue to evolve. The Department is constantly working to find mechanisms to improve our screening processes. Social media identifiers will provide U.S. consular officers an effective additional means for vetting visa applicants for identity resolution or specific visa ineligibility grounds.

- c) The Department received numerous comments expressing 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. “[I]f the login and password are required as identifiers there would be significant privacy concerns.” Raised by the Federation of Employers and Workers of America (FEWA). 3,181 commenters raised general privacy concerns or noted that the collection appeared invasive.
 - “[T]he seizure of an extraordinary and forensic level of detail on five years of one’s travel patterns, associations, social media handles, email addresses used, and telephone numbers used, should require reasonable suspicion of involvement of the individual in a crime, rather than being a non-negotiable condition for the granting of a visa.” Raised by the Identity Project, et al. 197 other commenters raised general Fourth Amendment concerns with the proposal.
 - “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 American Civil Liberties Union (ACLU) and 40 other commenters raised substantively similar concerns.
 - 1,388 commenters were particularly concerned about potential chilling impacts on speech. For example:
 - o “The collection of social media platform identifiers from nonimmigrant visa applicants, including Twitter handles, could have a chilling effect on free speech and the willingness of people who use Twitter to engage in free expression and conversation on the platform. Indeed, one of Twitter’s hallmarks is that users may engage in anonymous speech to express opinions that may be challenging or unpopular, or otherwise comment on issues without fear of reprisal. However, if users applying for a nonimmigrant visa are forced to disclose Twitter handles associated with otherwise anonymous accounts, the value of Twitter’s platform for such users evaporates. This may, in turn, chill global conversation and negatively impact the utility and value of Twitter’s platform for **all** users.” Raised by Twitter (emphasis in original).
 - o “We are deeply concerned that the proposed rules will have a chilling effect on speech, and universities will be especially impacted. Universities are places where students and faculty engage in ongoing debate, questions, criticism and collaboration.” Raised by the University of Minnesota-Twin Cities

- o “The most effective way for all working people to improve their conditions and treatment on the job is through collective action, most of which happens on-line in our modern world. Requiring already vulnerable workers to surrender their social media information could have a direct chilling effect on workers organizing, particularly at a time when immigration enforcement is actively targeting organizers.” Raised by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO).
- Some commenters raised concerns related to First Amendment rights to freedom of speech and association. For example, the Brennan Center and cosigning organizations state that “[p]roposed revisions will undermine First Amendment rights of speech, expression, and association” The ACLU expressed similar concerns: “[c]ollection of this information raises several First Amendment concerns. First, it will chill freedom of association by allowing the government to chart and amass connections between individuals living in the United States, including U.S. citizens, and applicants.” 6,366 commenters raised substantively similar First Amendment concerns.
- “Even for travelers who might not have First Amendment rights before they arrive in the United States, a system that may penalize people for speech they engage in online and deprive their audience of the ability to hear it, is profoundly incompatible with core American constitutional values.” Raised by the Brennan Center, et al. 1,248 commenters raised similar sentiments that the proposal was contrary to the values or founding principles of the United States.
- Some commenters expressed concern with the data of United States citizens being involved in the collection. For example, Twitter stated that “[g]iven the way our users interact across borders, and the lack of clarity surrounding the proposal, Twitter is concerned that information pertaining to United States citizens could be inadvertently collected and United States citizens’ constitutional rights could be jeopardized.” The ACLU stated that “[i]f the Department or another agency identifies individuals living in the United States through the use of social media identifiers provided on a visa application, it should promptly purge any record of that person’s identifiable information. It should also make clear that that information will not be used in any immigration adjudication of that third party nor stored or retained by other agencies or components.” 331 commenters raised substantively similar concerns.
- “Based upon this notice, applicants also have no idea how the information they provide might be used by other agencies or components—such as the Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE), or even local law enforcement – once the applicants enter the United States.” Raised by the ACLU. The University of Minnesota Twin Cities also stated “[i]t is unknown how the government will use this information and how long it will be stored.” 128 other commenters raised substantively similar concerns.

- “[B]oth OMB [sic] and the Department have dealt with data breaches in recent years, highlighting the challenge of protecting information in the current climate of digital warfare.” Raised by Muslim Advocates. 39 other commenters raised substantively similar concerns about the safeguards protecting the collected information.
- a. One commenter attached as a comment a copy of a comment that NAFSA submitted in response to the 2017 Department proposal to collect social media identifiers on the Supplemental Questions for Visa Applicants, DS-5535, stating “disclosing personal information shared on social media and travel history would place an added burden on vulnerable individuals, such as those who have fled terrorism and human rights abuses; those who have travelled to areas of concern for the purpose of gathering evidence, 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.” 53 additional commenters raised similar concerns about vulnerable populations being at risk.

Response:

The Department respects First Amendment rights of speech, expression, and association; the value of the exchange of ideas; and privacy rights.

The Department is not requesting, and does not intend to request, passwords for social media accounts. The Department will add instructions stating “Please do not provide passwords.” 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. The Department is aware 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 content 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. Consular staff are will be directed in connection with this collection to take particular care to avoid collection of third-party information unless relevant and necessary when conducting any review of social media information. Other U.S. government agencies authorized to access visa records are subject to other legal restrictions. Further, the Department of State intends to undergo internal review processes to ensure that the collection, retention, and review of this content is done in accordance with all privacy related statutory, regulatory, and department policy requirements and guidelines.

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 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. By law, such information may 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 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* 83 Fed. Reg. 28062. The Department's System of Record Notice (SORN) on Visa Records (STATE-39) describes the safeguards that protect certain visa records that 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 Records 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.

- d) 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:
- “The only thing that this measure would do is to restrict entry to our country to people whose thoughts that the State Department agrees with.” Raised by Melina Minch. 572 other commenters similarly asked whether statements in opposition to the administration would result in visa denials or asked for specifics regarding what information contained in social media postings or pages may result in a denial.
 - Several commenters queried what impact associations, friendships, or likes on social media would have upon a visa application. For instance, “[o]ne Pulitzer Prize-nominated journalist who reports on extremist groups connects with sources through Twitter, Instagram, Tumbler, and Telegram. An agent looking at her social media presence out of context might misunderstand the nature of such online relationships.” Raised by Muslim Advocates and 45 commenters raised substantively similar concerns.
 - “Given the context-specific nature of social media it could lead to misconstrued communications being treated as nefarious and result in rejected visa applications with personal and economic impact.” Raised by Privacy International and 615 other commenters raised substantively similar concerns

- “For example, notes taken by a consular officer about a visa applicant’s social media profile – that might be imperfectly translated, include conclusions without disclosure of the source on which they are based, or are not accompanied by contextualizing information from the visa interview – might later be introduced against them in a removal proceeding without an opportunity for verification or cross-examination, with serious consequences for the person affected.” Raised by the Brennan Center.
- Several commenters requested information on what type of oversight or ability to correct information contained in Department systems visa applicants may have. “If this program is to be implemented at all, meaningful oversight mechanisms should be built into it, including periodic audits and reviews as well as a formal dispute resolution mechanism for affected persons.” Raised by Muslim Advocates. “Both notices state that ‘the “Sign and Submit” statement will provide applicants additional information related to correcting records with the Federal Bureau of Investigation databases,’ but what about correcting records contained in other government security databases?” Raised by NAFSA: Association of International Educators, et al. 42 additional commenters raised similar concerns.

Response: The Department respects First Amendment rights of speech, expression, and association; the value of the exchange of ideas; and privacy rights. 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 any visa interview. The adjudicating officer makes a determination based on the totality of the circumstances, in light of the legal standards. Some social media activity may be evidence of activity, ties, or intent that are grounds for visa denial under the INA, and although the political motivation behind a visa applicant’s posting would generally be irrelevant to the visa adjudication, political motivation behind illegal acts does not mitigate ineligibility. For example, the INA makes inadmissible an individual convicted of a crime that is a crime involving moral turpitude under INA section 212(a)(2)(A)(i)(I), 8 U.S.C. § 1182(a)(2)(A)(i)(I), and is not a purely political offense, whether or not the applicant had some political motivation for the crime.

The collection of social media identifier information is an additional tool for identity resolution and to screen visa applicants for visa ineligibility. 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 and recognizes the challenge presented by the various contexts in which individuals post to social media.

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 an immigrant visa applicant believes such a decision to be incorrect, the applicant can provide additional evidence to the consular section where he or she applied for the visa, within one year of the refusal, to demonstrate that he or she overcomes the ground of ineligibility. 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.

e) 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. Some comments also questioned the utility of the information collected and how it improved the vetting procedures. These inquiries and comments included:

- 1,891 comments were concerned that the proposal would chill or deter travel to the United States, particularly certain classes of visa applicants. The commenters were particularly concerned with the economic consequences of reduced travel to the United States. For example:
 - “Adding unnecessary layers of inspection delays travelers’ entry into the country, which imposes a cost on the United States economy. Tourists will have less time (or will) to travel to and spend money in the United States. American business relying on members of the workforce who must retain visas will lose productivity, talent, and diversity.” - Muslim Advocates.
 - “Combined with worldwide coverage of reports of poor treatment at U.S. ports of entry, increasing numbers of international students, researchers, and scientists are making the decision to stay away or go elsewhere. Such decisions will result in the loss of valuable intellectual content and collaboration that our nation needs, both academically and economically.” - NAFSA
 - “This decline in tourism must not be taken lightly as it has cost the U.S. billions; in 2017 international spending directly supported 15.6 million American jobs and generated a total of \$2.4 trillion in economic output.” – Rep. Bennie Thompson
 - “[C]oncerned that these changes will further discourage scientists, engineers, physician-scientists, and students from other countries from pursuing research and education in the United States. These collaborations and exchanges are crucial to U.S. science, technology, and innovation, and to U.S. international leadership.” – National Academies of the Sciences, Engineering, Medicine.
- 252 commenters expressed concerns that the proposal was xenophobic, discriminatory, or otherwise designed to deter immigration. For example, an anonymous commenter stated, “[t]his proposal is a thinly veiled excuse to

grind to a halt basic immigration procedures with the political goal of preventing lawful immigration.”

- “Implementation of these additional requirements will likely result in an even larger backlog which impacts appointed faculty who need to be in the United States to begin teaching, students who have been admitted to degree programs, and researchers pursuing scientific collaboration.” Raised by Indiana University. Jill Leukhardt also stated that “[t]he collection of additional data is likely to stretch the resources of our consular officers, likely resulting in slower processing times.” 369 other commenters raised substantively similar concerns about the amount of information collected and anticipated backlogs.
- “The new requirement to list social media identifiers, telephone numbers, email addresses, and international travel demands provided a considerable amount of information. Inadvertent omissions will provide the basis for pretextual denials.” Raised by the National Immigration Law Center and 291 other commenters raised substantively similar concerns.
- “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.” Raised by the American Hotel & Lodging Association. 1,006 other commenters raised similar concerns about the burden on consular officers and the resources that would be spent related to this collection, stating it was a waste of valuable government resources.
- 485 comments stated that additional information being collected does not appear useful to the vetting process. For example:
 - o “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 Identity Project
 - o The ACLU commented that the need for the information is not fully explained and it was “not made clear how matches obtained from intelligence holdings will be interpreted or will impact immigration determinations.” The ACLU continued that the “use of identifiers to match against intelligence holdings is likely to lead to inconsistent, arbitrary, or discriminatory determinations.” Finally, the ACLU stated that “the Department offers no indication how an applicant’s

international travel over the last five years has weight on their adjudication, particular given that this information has not been necessary in the past.”

- “It is doubtful that an individual who promotes terrorism online will disclose information about the social media profile he is using to do so, or will retain postings that might get flagged as problematic.” Raised by the Brennan Center, et al, and 271 other commenters expressed substantively similar concerns that individuals with troublesome social media would not disclose it.
- 329 commenters felt the proposal was counterproductive by reducing the United States standing and reputation in the world. For example, “[s]teps intended to protect national security may have the unintended consequence of inadvertently depriving our nation of extending our democratic values through contact of Americans with visitors from other countries – as tourists, in classrooms, labs, lecture halls, and the workplace. Without these contacts, America is more susceptible to the distortions of extremist organizations and movements.” - Jill Leukhardt

Response: National security is our top priority when adjudicating visa applications. Every applicant for a U.S. visa undergoes extensive security screening. Maintaining robust screening standards for visa applicants is a dynamic practice that must adapt to emerging threats. The Department is constantly working to find mechanisms to improve our screening processes to protect our borders.

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. The additional information, including social media identifiers, will provide an effective additional means for screening visa applicants for specific visa ineligibility grounds or for verifying the applicant’s identity. 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 for existing questions and does not render the collection unnecessary. The Department similarly acknowledges that some applicants may transition their social media accounts from public-facing to protected, non-public settings.

In specific regard to student and exchange visitors, the Department recognizes the many potential benefits of foreign visitors in these categories, including significant contributions 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. When consistent with other demands, 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 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.

f) 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. 178 commenters raised concerns on these topics. Comments related to these concerns included:

- “Many people, including international students, are active on social media and have numerous accounts that frequently change over the years. The notice does not address the consequences should an applicant inadvertently omit an active account or forget a dormant one.” Raised by NAFSA.
- “[E]ven sophisticated social media users do not know their identifiers due to the manner in which these identifiers are assigned and used.” Raised by FEWA. Some commenters echoed similar concerns about defunct accounts with five year lookback period.
- “Visa applicants can easily overlook or forget that they own certain accounts. As an example, when a person creates a Gmail account, Google automatically creates a YouTube account for that user; this person may not realize that he has a YouTube account that he would need to report.” Raised by the Center for Democracy and Technology (CDT).
- “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.” Raised by the American Hotel & Lodging Association, et al.

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. The Department adjudicates visa applications around the world, and the Department and its consular officers are cognizant that not every individual has a social media presence, just as not every individual has children or a spouse. Answers on a visa application are not automatically suspect because an individual does not have information to provide. Consular officers may note any corrections an applicant makes during the consular interview.

An applicant who willfully misrepresents a material fact in a visa application may face immigration or criminal consequences. In any visa application, the determination of whether an applicant’s statement constitutes a willful misrepresentation of material fact

for purpose of visa ineligibility is determined by a consular officer 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. An inadvertent error should not impact an applicant's ability to receive a visa or immigration benefits.

- g) Some commenters were concerned that the proposal was part of a larger endeavor involving monitoring of applicants or discriminatory motives. For example:
- “The Department of State’s (DOS’) proposed access to social media use is part of a larger Trump Administration scheme of continuous, open-ended monitoring of non-citizens and naturalized citizens. This monitoring will occur without probable cause or reasonable suspicion of wrongdoing and without transparency, oversight, or accountability.” – NILC (emphasis in original)
 - Commenters were concerned about how the proposal interacts with DHS proposals related to continuous vetting. “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.” Raised by NAFSA.
 - Opposed to “extreme vetting initiative” – “It would have been targeted at ‘evaluating an applicant’s probability of becoming a positively contributing member of society as well as their ability to contribute to national interests,’ and predicting whether those entering the U.S. intended to commit a crime or terrorist attack once they arrived here.” – Brennan Center, et al.

Response: The collection seeks only information necessary to determine visa eligibility. Visa denials must be based on standards set out in the INA section 212(a), 8 U.S.C. § 1182(a) and other applicable U.S. law. Visas may not be denied on the basis of race, religion, ethnicity, national origin, political views, gender, or sexual orientation. To determine an applicant’s visa eligibility, consular officers evaluate all available information, including the responses and perceived credibility of the visa applicant during any visa interview. The adjudicating officer makes a determination based on the totality of the circumstances, in light of the legal standards.

- h) “Clan/tribe identity cannot be used as a basis to grant a visa to the United States and is not dispositive of statutory eligibility for a nonimmigrant or immigrant visa. This is discriminatory on its face and indirectly violates the anti-discrimination clause under the Immigration and Nationality Act.” Raised by the American-Arab Anti-Discrimination Committee. The Identity Project, et al also raised concerns with the definition of clan or tribe.

Response: The collection seeks information necessary to confirm an applicant’s identity and determine visa eligibility. There are many fields on the visa application, such as sex, employment history, and marital status that assist consular officers in resolving identity and are not grounds for visa denial. The question related to whether an applicant is a member of a clan or tribe is an identity-related question and has been requested from some visa applicants since at least 2011.

- i) In arguing that the collection has discriminatory intent, the Brennan Center raised that “the statement supporting the revision of this collection with respect to immigrant visas includes a provision to include in the application form “a link...to an electronic pamphlet that covers the illegality of [female genital mutilation], a practice that is not especially Islamic but is framed as such by anti-Muslim voices who have considerable influence in this administration.”

Response: The United States is committed to ending female genital mutilation or cutting (FGM/C). Section 644 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Public Law 104-208 (8 U.S.C. 1374), requires the Department of Homeland Security (DHS), with the cooperation from the Department of State, to notify visa recipients of the severe harm to physical and psychological health caused by Female Genital Mutilation (FGM/C). Consistent with these obligations, written notice is given to visa applicants in countries where FGM/C is a common practice. The proposal to provide the informational pamphlet electronically, rather than in the existing paper based form, will increase efficiency and streamline the process for such notification. The informational pamphlet is already provided to nonimmigrant visa applicants electronically.

- j) “Next, while a question on why an individual may have been deported from another country may potentially be appropriate for security purposes, it should not be asked as a simple yes or no question. Applicants must have an opportunity to explain their answer, especially as the reason an applicant may have been deported from another country may not be relevant to US authorities, such as a situation where an individual was deported for something that is not a crime in the US, for example by a regime that sought to punish a traveler for a comment they made that would normally be protected by the First Amendment in the US.” Raised by Harrison Gill.

Response: Applicants who indicate a prior deportation from any country will be prompted to provide additional details within the application.

- k) Some commenters expressed concern that the request was not targeted to specific applicants. For example: “This only targets those from visa-required nations, and is for all visa types. This leaves open many potential other avenues for entry where one does not have to submit documentation. I do not believe the policy should be broadened to include additional nations. I believe if ANY policy of this sort is to be enacted (which I feel uncomfortable with, see points below) that it should be done based on visa type alone - perhaps someone getting a green card, regardless of country of origin is subjected to this, but someone coming on a two week business trip is not.” Raised by Elizabeth Sherman.

Response: The Department is constantly working to find mechanisms to improve our screening processes, while not unduly burdening legitimate travel and immigration to the United States. This collection is intended to strike that balance.

- l) The request for 5 years of telephone numbers used in the last five years “could potentially encompass any telephone number that a visa applicant has ever used to place or receive a phone call within the past five years, including all hotel rooms, hostels, bed and breakfasts, inns, motels, work phone numbers, and potentially even conference call bridge lines.” Raised by AILA who suggested the Department

“reframe the question as specifically and narrowly as possible.” Similar concerns were raised on requests for email addresses. The American Hotel & Lodging Association also raised these concerns.

Response: The Department believes the term “use” in this context is clear and means a regularly used telephone number owned or operated by the applicant, such as home, work, or mobile number. The Department will insert a help box or public guidance through travel.state.gov to advise applicants that such transitory phone numbers or email addresses are not expected to be provided.

m) AILA relayed concerns relating to updated sign and submit language related to the Australian Department of Home Affairs: “In the event the language is correct and medical examinations of visa applicants will be collected and temporarily stored in the eMedical system hosted, operated and maintained by the Australian Department of Home Affairs, this raises concerns about the privacy and security of medical examination records when they are outside the control of the U.S. government.”

Response:

The eMedical system serves as a conduit for panel physicians to submit medical exam information to the Department. The eMedical system is hosted, operated, and maintained by the Australian Department of Home Affairs (DHA) (formerly the Department of Immigration and Border Protection), which is being held to the same high standards of confidentiality that the Department would require if a private company would have hosted the service.

Approved panel physicians will be granted access to the eMedical system by the Department. The medical examination information is input by these approved panel physicians and then transferred to the Department for the purposes of enabling consular officers to determine applicants’ eligibility for a visa. Access to visa applicant information in eMedical is password controlled and DHA and those operating under its auspices may only access the information to provide technical support to the U.S. government or its panel physicians on an as-needed basis. The eMedical system is approved as an information collection under OMB Control Number 1405-0230, and further details related to this collection are available at reginfo.gov.

n) “The Department of State has reiterated in its most recent report to the United States Human Rights Committee that, ‘As reported in the Initial Report, in the United States, the right to travel – both domestically and internationally – is constitutionally protected.’ This statement was made in the context of review of U.S. implementation of the ICCPR, and in that context was clearly intended to indicate that, in the opinion of the Department of State, protection of the right to travel in the U.S. extends to all individuals regardless of citizenship.” Raised by the Identity Project, et al.

Response: A citizen of a foreign country who seeks to enter the United States must comply with the immigration laws of the United States. This often means that an individual must first apply and be found eligible for a United States visa. A visa does not guarantee entry to the United States. The Department aims to manage the visa process through a rigorous enforcement of applicable laws, to best protect the United States in

accordance with those laws. Travel to the United States continues to be welcomed and encouraged for legitimate travelers. Aliens outside the United States generally do not have a constitutional right to travel to the United States.

- o) “[I]nstituting this question may compel other national governments to require American travelers to disclose their social media history as a precondition to travel abroad.” Raised by the AFL-CIO and 345 other commenters raised similar concerns related to the reciprocal treatment of United States citizens.

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. This additional information, including social media identifiers, will provide U.S. consular officers an effective additional means for vetting visa applicants for specific visa ineligibility grounds.

- p) There were 87 commenters who expressed support for the changes.

Response: The Department is constantly working to find mechanisms to improve our screening processes to protect U.S. borders and citizens, without unduly burdening legitimate travel and immigration to the United States. This collection is intended to strike that balance. 9. *Are payments or gifts given to the respondents?*

No payment or gift is provided to respondents.10. *Describe assurances of privacy/confidentiality*

The Department employs industry standard encryption technology to maintain a secure connection during the online application process. In accordance with INA section 222(f), 8 U.S.C. § 1202(f), information obtained from applicants in the 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. The same safeguards and confidentiality provisions that protect 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 once collected is confidential under INA section 222(f), 8 U.S.C. § 1202(f).

11. *Are any questions of a sensitive nature asked?*

The questions in the collection are designed to elicit the information necessary to determine whether an applicant is eligible for an immigrant visa under the INA, 8 U.S.C. § 1101 *et seq.* Consular officers may not issue a visa to aliens who are ineligible under applicable provisions of INA section 212, 8 U.S.C. § 1182, or any other provision of law, unless where authorized under the INA or the Department of Homeland Security grants a waiver. In order to adjudicate visa

eligibility, the application form specifically asks for biographical information on a variety of issues, including information concerning the alien's health, criminal offenses, narcotics addiction, political affiliation with subversive organizations and participation in genocide or terrorist activities. In addition, questions concerning the applicant's marital status, employment, social media use, and financial support are necessary to identify the applicant and to assist in determining eligibility for an immigrant visa. As noted in paragraph 10 above, such information is confidential under INA section 222(f), 8 U.S.C. § 1202(f).

The Department recognizes the sensitivity of social media information 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 platform terms of service; and to adhere to Department guidance limiting use of social media and assessments of an individual's social media presence. 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. The Department employs industry standard encryption technology to maintain a secure connection during the online application process. Consular staff will be directed in connection with this collection to take particular care to avoid collection of third-party information.

12. Describe the hour time burden and the hour cost burden on the respondent needed to complete this collection

The Department estimates that 710,000 applicants annually will complete this collection. The Department estimates that each applicant will spend 155 minutes, or 35 minutes longer than the current 120 minute estimate, to complete this collection. Therefore, the Department of State estimates that the annual hour burden to visa applicants posed by the collection is 1,834,167 hours (710,000 applicants x 155 minutes). The weighted wage hour cost burden for this collection is \$62,501,074.7 based on the calculation of \$24.34¹ (average hourly wage) x 1.4 (weighted wage multiplier) x 1,834,167.

13. Describe the monetary burden to respondents (out of pocket costs) needed to complete this collection.

The applicant must submit a digital photo, which may result in a cost. Based on a survey of various overseas embassies, the Department estimates that the average cost to an alien of obtaining a digital photograph will be five dollars. We therefore estimate that the total cost burden for the collection is \$3,550,000 (\$5 x 710,000 applicants).

14. Describe the cost incurred by the Federal Government to complete this collection.

The annual cost burden to the federal government for the DS-260 in fiscal year 2018 is \$156,695,500. The Department acknowledges that this estimate may be low as the cost model does not incorporate the new additions to the form. However, while the cost to the Federal Government will increase because of the new information collected, the Department assumes this increase amount will be *de minimis*. This estimate is based on the Consular Affairs fiscal

¹ Source: Data from the U.S. Bureau of Labor Statistics' May 2017 National Occupational Employment and Wage Estimates for all occupations (<http://www.bls.gov/oes>). Retrieved August 13, 2018.

year 2016 update to the Cost of Service Model, which calculates the cost to the U.S. government of providing consular services including visas. This estimate includes all immigrant visa types that use the DS-260. The application fees, which vary based on the immigrant visa category, generally are computed to recover the costs associated with immigrant visas.

15. Explain any changes/adjustments to this collection since the previous submission

This collection is being revised to include additional questions for visa applicants. As a result of these additions, the Department is increasing its burden estimate by 35 minutes to accommodate the additional time a visa applicant will spend completing the collection. The additional information could reasonably lead to information about whether the applicant is eligible for a visa, including resolving the identity of an applicant. The Department will make the following changes:

- a. A new required question labeled “Social Media” will instruct:

Select from the list below each social media platform you have used within the last five years. In the space next to the platform’s name, enter the username or handle you have used on that platform. If you have used more than one platform or more than one username or handle on a single platform, click the “Add Another” button to list each one separately. If you have not used any of the listed social media platforms in the last five years, select “None.”

The form will include a data field labeled “Social Media Identifier” for the applicant to type in his or her social media “handle” or identifier. The applicant may select “Add Another” if the applicant has more than one provider/platform or social media identifier to disclose. Applicants will be advised they do not need to list accounts designated for multiple users within a business or other organization. Applicants will be provided help boxes or public guidance through travel.state.gov to assist in common questions, such as how to find the “social media identifier” of an account. Applicants will be advised to list each identifier used, including multiple identifiers on a single platform. No visa application is guaranteed approval, and all can be denied for a variety of reasons, but an applicant who does not have a social media presence will not be denied on that basis.

The platforms listed may be updated by the Department by adding or removing platforms. Additional platforms will be added only if collection is consistent with the uses described in the Supporting Statement and after Office of Management and Budget approval. The Department will not collect applicant passwords for these social media platforms. The Department is only collecting public-facing identifiers from designated platforms, and will not go beyond publicly available information.

The Department will collect this information for identity resolution and vetting purposes based on statutory visa eligibility standards.

- b. Applicants will be asked about prior immigration violations. Specifically, applicants will be asked “Have you ever been removed or deported from any country?” An affirmative response will prompt the applicant to provide further details.

- c. Applicants will be asked: “Are you the spouse, son, or daughter of an individual who has engaged in terrorist activity, including by providing financial assistance or other support to terrorists or terrorist organizations, in the last five years?” An affirmative response will prompt the applicant to provide further details.
- d. All applicants will be requested to provide details related to travel history. Specifically, applicants will be asked whether they have travelled to any country outside of their country of residence during the last five years. An affirmative response will prompt the applicant to provide further details.
- e. Applicants are currently asked for their current, secondary, and work telephone numbers. Applicants will be asked “Have you used any other telephone numbers during the last five years?” An affirmative response will permit applicants to add additional numbers used.
- f. Applicants are currently asked for their current email address. Applicants will be asked “Have you used any other email addresses for personal purposes during the last five years?” An affirmative response will permit applicants to add additional addresses used.
- g. The “Sign and Submit” section of the DS-260 will add an additional notification for applicants related to the Federal Bureau of Investigation’s fingerprinting system. Specifically, applicants will be informed that “If fingerprints are collected as part of your application process, they may be used for the purpose of comparing them to other fingerprints in the FBI’s Next Generation Identification (NGI) fingerprint system or its successor systems (including civil, criminal, and latent fingerprint repositories). Procedures for obtaining a change, correction, or update of an FBI identification record are set forth in Title 28, CFR 16.34. The photograph that you provide with your application may be used for employment verification or other U.S. law enforcement purposes.”
- h. The Confidentiality Statement will be updated to remove the headings. The text will remain unchanged.
- i. In light of changes to the medical examination process for some applicants, the Department will provide information about the new system to applicants. The Department intends to add the following language to the “Sign and Submit” page to inform applicants about the requirements:

Immigrant visa applicants are required to undergo a medical examination with an authorized physician to assess visa eligibility consistent with INA Sections 212(a) and 221(d). I understand that failure to provide required information may cause delay or denial of my visa application. If required to undergo a medical examination, I understand that my medical examination information may be collected and temporarily stored in the eMedical system hosted, operated, and maintained by the Australian Department of Home Affairs. If my medical examination is collected in eMedical, I understand and consent to its collection and temporarily being stored in such system, and being transferred to the U.S. Government for the purposes of enabling the U.S. Department of State to determine my medical eligibility and for the U.S. Centers for Disease Control and

Prevention to undertake public health functions under the Public Health Service Act Section 325 and INA Section 212(a).

j. Applicants from countries where female genital mutilation/cutting (FGM/C) is prevalent will be provided a link in the DS-260 to an electronic pamphlet that covers the illegality of the practice in the United States. Further, applicants will be required to check a box verifying that the link was provided to them. Currently, the Department posts a copy of this information sheet in visa wait rooms for applicants to read. This change will increase the accessibility of the information sheet for all applicants from FGM prevalent countries.

k. The electronic signature language will be updated to remove outdated language related to exclusion and deportation. The second paragraph of the E-Signature language will be amended to read as follows: “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. Specify if the data gathered by this collection will be published.

The data gathered will not be published; however, a quantitative summary of all Department of State visa activities is published in the annual Report of the Visa Office. The Report of the Visa Office is an annual report providing statistical information on immigrant and non-immigrant visa issuances by consular offices, as well as information on the use of visa numbers in numerically limited categories. The Visa Office currently has annual reports available from 2000 to 2017. The link to the site is: <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html>.

17. If applicable, explain the reason(s) for seeking approval to not display the OMB expiration date. Otherwise, write “The Department will display the OMB expiration date.”

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

18. Explain any exceptions to the OMB certification statement below. If there are no exceptions, write “The Department is not seeking exceptions to the certification statement”.

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.